"The Emergence (or not) of Private Property Rights in Land: Southern Nigeria, 1851 to 1914"¹

[This paper is longer than I intended; my apologies. The fourth section is the most important.]

1. Introduction

I conceive that land belongs to a vast family of which many are dead, few are living and countless members are yet unborn.

-Gboteyi, the Elesi, Second Chief of Odogbolu, Ijebu-Ode²

When you know more of our people you will know how to value that. They simply tell you what they think you would like to hear.

-Dr. Oguntola Sapara³

Land and labor are the most basic factors of African agriculture, and so the institutions governing their control are critical in determining economic outcomes in countries such as Nigeria, where even today less than forty percent of the population lives in urban areas.⁴ Systems of land tenure influence (among other variables) investment incentives,⁵ access to credit⁶, household labor supply⁷, ceremonial expenses,⁸ the distributions of land⁹, power¹⁰ and income,¹¹ the incidence of conflict and violence,¹² and ecological management,¹³ though the actual operation of these impacts is highly context-dependent. The economic importance of these effects is not hypothetical; Goldstein and Udry (2005), for example, estimate the costs of the insufficient fallowing of maize and cassava plots that results from endogenous tenure insecurity in Ghana to have amounted to between 1.4% and 2.1% of that country’s GDP in 1997¹⁴ – approximately half of Fogel’s reckoning of the contribution of the railroad to the U.S. economy in 1890. Despite these inefficiencies and contrary to the policy initiatives of most post-colonial

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² WALC, Correspondence, p. 183.
³ WALC, Minutes, p. 270
⁴ 2003 World Population Data Sheet.
⁵ Besley (1995)
⁶ Feder and Onchan (1987)
⁷ Field (2003)
⁸ Berry (1992), p. 347
⁹ Place and Migot-Adholla (1998)
¹⁰ Banerjee, Gertler and Ghatak (2002)
¹¹ Deninger and Chamorro (2004)
¹² Alston, Libecap and Mueller (1999)
¹³ Heltberg (2002)
¹⁴ Goldstein and Udry (2005), p. 18
African states, “community-based” tenure systems remain predominant throughout the greater part of sub-Saharan Africa, including Nigeria.\textsuperscript{15} Understanding the origins and persistence of African land tenure systems is thus indispensable in explaining their present forms, purposes and implications.

The present paper investigates the extent to which private property rights over land emerged in Southern Nigeria during the latter half of the extended nineteenth century – the period of transition “from slave trade to ‘legitimate commerce’” which culminated in the imposition of colonial rule. The British abolished the export trade in slaves in 1807. Though it would be several decades before the Atlantic slave trade was effectively suppressed, “legitimate” commodities (albeit products produced largely by slave labor) became the predominant exports of West Africa over the course of the nineteenth century. These included timber, ivory, gold, groundnuts, and – most importantly – palm products. Rubber and cocoa also emerged as significant crops during the 1890s. In 1807, British imports of palm oil were 2,333 cwt; in 1895 they peaked at 1,058,989 cwt.\textsuperscript{16} The trade in oil was supplemented after 1850 with a trade in palm kernels for which British imports peaked in 1884 at a volume of 43,372 tons.\textsuperscript{17} The bulk of the palm trade was concentrated in Southern Nigeria, initially in the Bight of Biafra, especially at Old Calabar and latter Bonny and Brass, while the Bight of Benin grew in importance after 1830.\textsuperscript{18} The motivation for this study has grown out of two questions. First, is it possible to improve on cross-country econometric analyses\textsuperscript{19} of the importance of economic institutions by following the development of specific institutions through time? Second, does the growth of export agriculture drive commercialization of land and labor, and can the manner in which this occurs tell us anything about how economic institutions are shaped by the interactions of different economies? Changes to land tenure and agricultural slavery in Southern Nigeria were heterogeneous throughout this period. In different locations land and trees were commercialized, ‘lineagaized’, concentrated, or left in the hands of smallholders, while slavery – though generally intensified – was unevenly distributed, and in some cases grew more severe while in others slaves acquired greater social mobility. Further, the changes that did occur were not

\textsuperscript{15} Bruce (1998), p. 8
\textsuperscript{16} Lynn (1997), p. 13
\textsuperscript{17} Lynn (1997), p. 14
\textsuperscript{18} Lynn (1997), p. 19-21
\textsuperscript{19} Though the most obvious example here is Acemoglu, Johnson and Robinson’s “The Colonial Origins of Comparative Development,” the particular paper that sparked my interest here was Nunn’s “Slavery, Institutional Development and Long-Run Growth in Africa.”
obviously the result of economic impetuses; factors such as war, political power and new ideologies often operated alongside the growth of export agriculture. This paper attempts, then, a preliminary disentanglement of the importance of these forces.

This paper is structured as follows. Section 2 provides historical context by surveying the transition to ‘legitimate commerce’ in West Africa generally and the particular case of Southern Nigeria more specifically.\textsuperscript{20} Section 3 both identifies the influential theories of agrarian change that have attempted to explain the development of private property rights in land and discusses the historical sources used for this essay. The reason for treating these subjects together is that many of the ‘primary’ sources – far from being un-interpreted descriptions of African life – provide us with accounts already shaped by their authors’ beliefs about the development of agrarian institutions over time. Section 4 identifies a number of factors such as population pressure and the rise of export agriculture that can plausibly be inferred to have affected systems of land tenure in Nigeria during this period. Rather than proposing that any of these influences had easily interpretable impacts on the systems in which they operated, the approach here mirrors that of Berry (1993). Agrarian change must be studied, she argues, by understanding “law as a social process, transactions as subject to multiple meanings, and exchange as open-ended and multidimensional.”\textsuperscript{21} In the case of land tenure, the ambiguity of rights implies that access to land depends on “participation in processes of interpretation and adjudication” – an activity that requires accumulation of political support and membership in social networks, and through which multiple and overlapping claims to land are sustained.\textsuperscript{22} Though Berry’s (1993) argument is tailored to the colonial and post-colonial eras, I argue that is also useful for explaining developments in Southern Nigeria during the pre-colonial and early colonial periods. The myriad factors affecting landholders during the later nineteenth century created new opportunities to contest access to resources, and were exploited as such, although actual outcomes depended on an uncountable number of additional and unpredictable influences, producing heterogeneous and complex results that cannot be understood within the moncausal frameworks of Boserup (1965) or Hopkins (1973). Section 5 concludes, and suggests possible directions in which I would like to take this study in the future. As should be clear, this is also a

\textsuperscript{20} Some parts of this section will be taken directly from the term paper I submitted for development economics in the fall term of second year. I’m lazy.
\textsuperscript{21} Berry (1993), p. 13
\textsuperscript{22} Berry (1993), p. 104
very rough draft of this paper. Many citations are incomplete, some sections have yet to be written, and throughout I have made notes to myself about parts or points that need to be improved, and additional sources that must be examined.
2. Historical Background

2a. Legitimate Commerce

The body of work on Nigeria in the 19th century is part of a larger literature on the importance of the transition from slavery to so-called “legitimate commerce” throughout Africa, and particularly on the Western coast. A useful starting point here is the argument of Hopkins (1973). He claims that the period constituted a structural break from the past which initiated the “modern economic history” of West Africa, and is critical to understanding Africa’s later partition. Explicitly applying Watkins’ “Staple Theory,” he focuses on the effects of “the physical properties of the staple and the type of linkages which it establishes” to explain the structural changes that occurred in the economies of West Africa. Palm products, he argues, exhibited few returns to scale, and could be produced efficiently by small households. Linkages with the domestic economy were stronger than those created by the slave trade, and most relevant to the present study, “the new export trade saw a marked increase in the commercialization of labor and land in Africa, instead of, as in the eighteenth century, the export of one factor of production (labor) and the comparative neglect of another (land), except for domestic needs.” Most writings on the period subsequent to Hopkins’ (1973) have either accepted or responded to his arguments.

One view that predates Hopkins’ (1973) book is Hla Myint’s application of the so-called “vent-for-surplus” model to this period. Here, an area with substantial unused capacity is brought into the world market by an expansion of foreign demand or falling transportation costs, and producers are goaded into participation by the prospect of importing manufactured goods. A similar view was espoused by McPhee (1926). Hogendorn (1976) reviews this theory for five primary commodities during the period, and concludes that, while Myint’s model matches the broad outlines of the African experience, it neglects indigenous capital formation and entrepreneurship. In the case of palm oil, the former consisted of tree-planting by producers

23 Hopkins (1973), p. 124
24 Hopkins (1973), p. 125
26 Hopkins (1973), p. 126. It is not clear what evidence Hopkins has of the commercialization of land on which to base this claim, though the concentration of his early research on the particular case of Lagos may explain his willingness to make it. One scholar referred to this in private conversation as “a single throwaway line” not to be taken too seriously.
27 Hogendorn (1976), p. 16-17
28 Hogendorn (1976), p. 17
and working capital supplied by European traders, while the latter was best evidenced by the presence of African middlemen.²⁹ Freund and Shenton (1977) charge that Hogendorn’s (1976) critique is superficial; rather, they argue that the transition to large-scale cash-cropping was not costless, and involved the reorientation of resources – notably labor – that were anything but surplus.³⁰ This shift was connected the restructuring of political power both preceding and during colonialism, and African initiative was able to survive only within the context of the export-oriented economy.³¹ Even still, elements of the vent-for-surplus theory have colored most historical interpretations that have followed it.

The literature on the “legitimate” commerce and economic transformation in West Africa is large, and only a small portion may be sketched here. Lovejoy (2000) has espoused a view consistent with that of Hopkins (1973), but more focused on the transformations in slavery resulting from abolition. He contends that in the nineteenth century “slavery was harnessed to capitalism,” as the main products of “legitimate commerce” were produced or transported largely by slaves.³² The Atlantic trade was critical in the formation of this “slave mode of production,” as it helped establish two of its prerequisites – politically institutionalized enslavement processes, and distribution of slaves within Africa through trade.³³ Not all, however, have seen the slave trade and its abolition as having a large effect on African institutions. Eltis (1987), for example, has shown that European imports could have constituted no more than 9% of West African incomes during the 1780s, the peak period for the importance of this trade before 1850.³⁴ The political legacy of the slave trade, to him, was the coastal trading states such as the Gold Coast or Lagos; that these were “resilient” after abolition he takes as evidence that their power was due to trade in general, not their specific involvement in slavery.³⁵ Contra Lovejoy (2000), he argues that the nature of slavery in West Africa depended on developments within the region – “rejuvenated Islam,” lack of drought, internal markets, and Oyo disintegration – and that labor in southeastern Nigeria continued to be organized within the traditional kinship system; the difference in slavery used in production for internal markets and for external markets was

²⁹ Hogendorn (1976), p. 20. As shall become clear below, it is questionable to what extent tree-planting actually occurred.
³⁰ Freund and Shenton (1977), p. 191
³¹ Freund and Shenton (1977), p. 192
³⁴ Eltis, (1987), p. 72
³⁵ Eltis, (1987), p. 75
slight.\textsuperscript{36} Law (1995a) adds that the decline of the trans-Atlantic slave trade and rise of agricultural exports need “to some degree to be considered separately,” since not all slave exporters took part in the agricultural trade, and vice versa.\textsuperscript{37} Hopkins’ (1973) argument is premised on the new trade being less profitable than that in slaves. Law (1995a) notes that, if carried by porters, it would have taken over 300 porters to carry five tons of oil, which would sell for the same price as five slaves. Austin (2004a), drawing attention to the political side of the transition, has argued that though several large states emerged from the jihads of nineteenth century West Africa, others collapsed.\textsuperscript{38} The result of the existing limits to state power was that non-state institutions such as rotating credit and secret societies were significant in sustaining the market. Still, states were able to reduce transactions costs by protecting individuals and marketplaces, providing “enforceable adjudication” and the unification of markets, physically maintaining trade routes, promoting use of currency, defending their subjects from foreign competitors, and helping secure factors of production.\textsuperscript{39} The costs incurred through taxation, war, and stifling of private institutions ensured, however, that “Smithian growth and economic rent to a large extent went together” where states existed.\textsuperscript{40}

The recent survey by Lynn (1997) makes a series of arguments that can be used to frame the discussion that follows, and is thus worth noting in greater detail. He describes the labor requirements of producing various qualities of oil. He claims that the more labor-intensive production of “soft” oil predated the export market; producers in the nineteenth century decided which method to use based on the availability of inputs – fuel, water, and labor – with the latter being used to gather the other two.\textsuperscript{41} Thus, echoing Martin (1995), he argues that soft oil was produced in regions of high population density.\textsuperscript{42} To some extent, labor was drawn from its own underutilization, such that palm oil production coexisted with the normal agricultural cycle.\textsuperscript{43} However, in many cases slaves were used on plantations or domestically to produce oil.\textsuperscript{44} Added to this were the demands for labor in transporting the oil. Not all producers turned to slaves; he

\textsuperscript{37} Law (1995a), p. 6
\textsuperscript{38} Austin (2004a), p. 14
\textsuperscript{39} Austin (2004a), p. 19-24
\textsuperscript{40} Austin (2004a), p. 25-26
\textsuperscript{41} Lynn (1997), p. 49
\textsuperscript{42} Lynn (1997), p. 49
\textsuperscript{43} Lynn (1997), p. 50-51
\textsuperscript{44} Lynn (1997), p. 51-52
agues that where population density was high, there was no scarcity of labor necessitating them.\textsuperscript{45} Though women were able to keep the proceeds from palm kernels, for the most part this transition increased demands on their labor in processing palm nuts, while men secured ownership over the output.\textsuperscript{46} Again, the decision to use women or slaves depended on population density.\textsuperscript{47} After 1800, the spread of ownership over these palms, restrictions on their use, intentional planting, and the emergence of plantations were uneven, but more importantly, uncommon.\textsuperscript{48}

Lynn (1997) essentially claims that the use of land, trees and slaves was driven by factor abundance – the availability of land and labor, both male and female. There are several difficulties with this argument. The abundance of a factor of production is moot for individuals denied access to that factor by the institutional environment; if “customary” labor is plentiful, those who cannot mobilize it may still resort to slave purchase. If land can be appropriated by the powerful, the absence of scale economies does not explain the failure of large plantations to emerge. As Martin (1984) has argued for the Ngwa, “divisions within Ngwa society were as important as local environmental factors in shaping the pattern of local agrarian change.”\textsuperscript{49} Further, institutions governing land can determine decisions about labor and vice versa. Further, factors that were not expressly economic in nature may have been in some cases paramount. In the Yoruba regions affected by war, slaves may have been held in agriculture not for their productive value but because they could be called up for military use. In Oroge’s (1971) words, “a definite alliance existed between the military and the economic in the nineteenth century.”\textsuperscript{50} Similarly, individualized land tenure emerged in some cases after the arrival of Christian missionaries bringing new ideas whose scope extended beyond that of religion. These failures of Lynn’s (1997) broader explanation are highlighted in greater detail below.

2b. The Transition in Southern Nigeria

\textsuperscript{45} Lynn (1997), p. 52
\textsuperscript{46} Lynn (1997), p. 53; Martin (1995) discusses this in greater detail, as described below.
\textsuperscript{47} Lynn (1997), p. 54
\textsuperscript{48} Lynn (1997), p. 55-56
\textsuperscript{49} Martin (1984), p. 413
\textsuperscript{50} Oroge (1971), p. 152
A map of Southern Nigeria is appended to the end of this essay.\(^51\) Southeastern Nigeria is dominated by three principal ethnic groups – Igbo, Ibibio, and Ijo – who are spread across in three major ecological zones: the coastal mangrove swamps, a forest zone, and the savannah to the north. These are populated by the Ijo and Efik Ibibio, Anang and Eastern Ibibio and southern and eastern Igbo, and the northern and northeastern Igbo, respectively.\(^52\) West of the Niger River are the Edo-speaking Bini of the pre-colonial kingdom of Benin as well as the Yoruba, who are divided into smaller groups often referred to by their city or region of origin, such as the Awori, Egba or Ijebu. Given this expansive diversity, the impact of abolition on Nigeria was uneven. Lovejoy (2000) provides a summary on which I draw heavily in the next two paragraphs. In the Yoruba areas, the collapse of Old Oyo – the dominant state in Southwestern Nigeria – began with the Muslim Cavalry’s revolt against the aristocracy in 1817. Oyo Muslims allied with other Muslims to the north and destroyed the Oyo capital. Throughout the remainder of the nineteenth century the city states that filled the vacuum left behind jockeyed for power in a series of wars fought in part for slaves. Oyo refugees who did not wish to live under Fulani rule fled south, into a war already existing between Owu and the alliance of Ife and Ijebu.\(^53\) Owu was destroyed, and its Egba inhabitants resettled at Abeokuta, the “rock of refuge.”\(^54\) By the 1830s, new towns had been established at Ibadan, Ijaye and Oyo.\(^55\) After the collapse of Oyo, many slaves went to Ibadan; thousands arrived each year, and were trained as soldiers, sold, put in harems, married, or sent to farm palm oil and other goods. By the 1870s, 104 families at Ibadan owned over 50 000 slaves.\(^56\) British occupation of Lagos and French occupation of Porto Novo ended the export of slaves, but inland enslavement continued. In 1851, Britain deposed the “incorrigible slave-trader” Oba Kosoko of Lagos, replacing him with Akitoye.\(^57\) Not satisfied with the results, Britain compelled his successor Docemo to cede Lagos by treaty in 1861.

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\(^51\) I found this map through a quick Google image search, and I’m not sure of the source. It has something to do with book publishing, but it is clearly labeled and lists most of the major cities mentioned here. One of my tasks for the future is putting together a map of my own. A few major cities that are mentioned are not listed on the map, particularly those in the Niger Delta – Brass, Bonny, and New Calabar are all in the vicinity of Port Harcourt. As well, Ijebu-Ramo and Ijebu-Ife are located near Ijebu-Ode.

\(^52\) Northrup (1981), p. 102; this is discussed in more detail in Northrup (1978). Notably, the major subgroups of Igbo are named for their geographic directions (Northern, Northeastern, etc…).

\(^53\) Awe (1973), p. 65

\(^54\) Elgee, “The Evolution of Ibadan,” p. 2

\(^55\) Awe (1973), p. 65. This Oyo was not at the same cite as the destroyed capital of the Oyo empire, known as “Old Oyo.”

\(^56\) Though quoted in Lovejoy (2000), the original source is Oroge (1971).

\(^57\) Mann, (1995), p. 145
Biafra continued to export slaves at high rates, since its geography made it difficult to patrol. This consisted mainly of Aro capture of Igbo. The British were effective at patrolling the Niger delta slave trade, and its exports of palm oil grew in its place. Here, most slaves were held near commercial centers, the Niger delta, and in northern Igboland. Wealthy men (and some women) acquired slaves and pawns to consolidate their positions. The Aro, while only roughly 10% of the population, owned most of the slaves. In northern Igboland, slaves were mainly used to grow yams for sale to the more southern Igbo who diverted their attention to palm oil. In central Igboland, slave holdings were small and their treatment varied. Many slaves became prominent in Niger Delta trading houses, and were able to purchase their own slaves. Taxing the palm-oil trade was more difficult than taxing the slave trade, since the former was produced in smaller quantities and in dispersed locations.\textsuperscript{58} The “city states” of the Niger Delta were able to survive as major ports, but this did not prevent political upheavals during the 1850-1875 period; new traders competed with existing wholesalers, and frequently challenged the political status quo.\textsuperscript{59} To this were added the pressures of a growing community of European expatriates, who both competed with the wholesalers and acted as suppliers of credit, and a class of educated, Westernized merchants composed of liberated slaves (the “Saro” from Sierra Leone and their Brazilian counterparts) and their descendants.\textsuperscript{60}

[I haven’t said much about Calabar and the Niger Delta city-states here. I need to go back and look at Latham (1973) and Dike (1956) to fill this in.]

Lynn (1997) notes that palm oil was used within West Africa for cooking more than 5000 years ago.\textsuperscript{61} Its export is not a recent phenomenon; Egyptians traded it during the third millennium BC, and sales to European traders can be dated at least to 1480.\textsuperscript{62} By the mid-1780s, Liverpool’s oil imports averaged 40 tons a year.\textsuperscript{63} Volumes traded rose significantly during the nineteenth century in response to the British Industrial Revolution; palm oil imports to the UK from West Africa were “1,000 tons in 1810, 10,000 tons in 1830, over 20,000 tons in 1842, over

\textsuperscript{58} Hopkins (1973), p. 145
\textsuperscript{59} Hopkins (1973), p. 146
\textsuperscript{60} Hopkins (1973), p. 148
\textsuperscript{61} Lynn (1997), p. 2
\textsuperscript{63} Northrup (1978), p. 182
30,000 tons in 1853, and over 40,000 tons in 1855,” and averaged 50,000 tons a year to 1900.\textsuperscript{64} This demand came mainly from the industrial demand for oils and fats.\textsuperscript{65} It was also used extensively in manufacturing candles and soap.\textsuperscript{66} Demand for palm kernel oil did not come until later in the 19\textsuperscript{th} century, when it was used in margarine and cattle feed.\textsuperscript{67} Palm kernels were pursued as an alternative source of revenue in the face of declining palm oil prices.\textsuperscript{68} Oil exports from Lagos averaged 5,697 tons per year from 1866-70, and kernel exports were 29,305 tons per year from 1876-80.\textsuperscript{69} From Old Calabar, these annual averages were 1,000 tons in the 1810s, 4,000 in the 1830s, 5,000 by 1847, and 4,000 to 1870. For Bonny the corresponding figures are 200 tons in the 1810s, 8,000 by 1847, and 10,000 in 1851. In 1869, the foundation of Opobo sparked a series of wars between New Calabar, Bonny and Opobo, and trade shifted east towards Old Calabar, while the total volume of the region averaged 20,000 tons per year over the period c. 1855-1885.\textsuperscript{70} Oil prices, however, ended their rise in 1850, and dropped significantly after 1885.\textsuperscript{71} Palm kernels thus supplanted oil late in the century. For the southeast, Northrup (1978) estimates that (assuming four person-days per tin of oil), the labor invested in palm-oil was 750,000 person-days in 1819 and 10,000,000 in 1864. Labor was withdrawn from food production to make palm oil; "some communities, such as the Arochukwu and Ndoki, almost ceased to farm at all." Slaves were taken increasingly from areas not involved in oil production. The functions of slaves became more specialized, and their numbers increased most greatly in the northern hinterland and in trading communities.

The region stretching from the Gold Coast to Old Calabar was the principal source of African palm products, owing to its natural endowment of oil-palms and waterways.\textsuperscript{72} The supremacy of West Africa as the global source of palm oil was not challenged until the development of plantations in Zaire, Sumatra and Malaysia after 1910.\textsuperscript{73} Though colonial

\textsuperscript{64} Hopkins (1973), p. 128; no primary source is given.  
\textsuperscript{65} Hopkins (1973), p. 129  
\textsuperscript{66} Lynn (1997), p. 3  
\textsuperscript{67} Hopkins (1973), p. 129  
\textsuperscript{68} Hopkins (1973), p. 139  
\textsuperscript{69} Mann (1995), p. 145  
\textsuperscript{70} Martin (1995), p. 178-79; her figures are assembled from several different sources.  
\textsuperscript{71} Martin (1995), p. 179  
\textsuperscript{72} Hopkins (1973), p. 140  
\textsuperscript{73} Uba (1981), p. 4
officials frequently ascribed this to “wasteful collection and non-collection of oil-palm fruits.” Palm fruits in Sumatra averaged 59.5% pericarp, as contrasted with 47% and often less in Nigeria. Old Calabar dominated the export trade after 1807, and was surpassed by Bonny in the 1830s which was itself later eclipsed by the creation of Opobo during the 1870s; the Niger Delta as a whole accounted for some three quarters of Britain’s oil imports and remained paramount until the 1870s. The actual production of palm oil and later palm kernels occurred inland; while the *Elaeis guineensis* is found throughout West Africa, it is concentrated today in southeastern Nigeria, especially in a “belt” running from 20 to 150 miles from the coast. Palms are unevenly concentrated within this zone; while averaging some 40-50 trees per acre, much higher densities are found near Ikot Ekpene, Abak, Opobo, and the Niger south of Onitsha. This exceptional density results from successive generations of farmers clearing the rainforest for agriculture and discarding their palm kernels. Two means of producing palm oil were used in the Niger Delta. The first, placing the fruit in canoes and leaving it to ferment, produced “hard”, inedible oil. Chemically, once the lipase of the fruit is allowed to come into contact with the oil, fermentation of the oil, which raises the free fatty acid content of the oil and causes it to solidify, begins unless the temperature of the fruit is raised above 55 Celsius. The second method “represented a change from the early domestic norm,” and involved a minimum of fermentation. Palm nuts were boiled, pounded in a mortar to separate the pericarp from the kernel, the pericarp crushed into a fiber, and the fiber then boiled to remove the oil (a highly labor-intensive process). Fermentation eased the extraction of oil, but also increased the free fatty acid content of the resulting product, lowering its value. Palm oil quality varied by region; southwestern Nigeria

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74 West Africa – Palm Oil and Palm Kernels (1923) Report of a Committee Appointed by the Secretary of State for the Colonies, p. 3  
77 Lynn (1997), p. 2  
78 Northrup (1978), p. 185  
79 Northrup (1979), p. 8  
80 Martin (1995), p. 182  
82 Martin (1995), p. 182. Clearly, she is in disagreement with Lynn (1997) and G.I Jones about which production method predated the other. Their argument is that, while soft oil was always used within the household, it was the bulk production for export that led to the introduction of less labor-intensive means of producing lower-quality oil for industrial purposes.  
83 Lynn (1997), p. 48  
84 Lynn (1997), p. 47
exported a soft (low fatty acid content), high-quality product. “Fine Lagos” oil sold for a premium of perhaps 20%. In the Southeast, the oil content of palm fruit was particularly high, and the lack of virgin forest in Igboland made alternative crops such as rubber and coca less attractive.

85 Hopkins (1973), p. 139
86 Lynn (1997), p. 46
3. Theories and Sources

3a. The Emergence of Private Property in Land

The Bible commands that “the land shall not be sold for ever: for the land is mine, for ye are strangers and sojourners with me.”\(^88\) Studying the historical development of land tenure could take us back 3500 years. I will begin with Maine’s \textit{Ancient Law}. Contra the presumptions of writers such as Blackstone, Sevigny and Hobbes who took from Roman jurisprudence the presumption that individual ownership was historically primeval, argued rather that “private property, in the shape in which we know it, was chiefly formed by the gradual disentanglement of the separate rights of individuals from the blended rights of a community … the Family expanding into the Agnatic group of kinsmen, then the agnatic group dissolving into separate households; lastly, the household supplanted by the individual.”\(^89\) Initially, transactions in property are burdened by ceremony, and “as soon as society has acquired even a slight degree of activity,” property is divided into higher and lower orders according to dignity, so that inferior goods – in Roman tradition the Res Nec Mancipi – are “relieved from the fetters which antiquity has imposed on them.”\(^90\) Gradually, this freedom spreads to the higher forms of property, the Res Mancipi, which generally includes those items known “first and earliest,” including land.\(^91\) Later distinctions are made between types of property according to their mode of acquisition.\(^92\) The final division is between movables and immovables.\(^93\) Maine (1864/1986) derived the empirical support for his theory from observing the various forms taken by ‘Village Communities’, as well as those in Russia and the Balkans. The twin motive forces in Maine’s view, then, are commerce (or “activity”) and ideology, which shapes the classification of property. Maine’s view of a progression from communal to individual tenure did not (and has not) become universal, even though it is predominant – Keith (1912), for example, argued that ownership of land emerges out of individual possession as limited by the claims of the individual occupier’s family and of political power in the form of the chief.\(^94\)

\(^{88}\) Leviticus 25:23
\(^{89}\) Maine (1864, 1986), p. 261
\(^{90}\) Maine (1864, 1986), p. 264
\(^{91}\) Maine (1864, 1986), p. 266
\(^{92}\) Maine (1864, 1986), p. 272
\(^{93}\) Maine (1864, 1986), p. 274
\(^{94}\) Keith (1912), p. 331
Boserup (1965) is the touchstone of the modern development literature on the historical development of land tenure systems. Objecting to the Malthusian view that agricultural technology limits population growth, she contends that exogenous intensification of population pressure increases the frequency of cultivation by reducing fallow periods.\textsuperscript{95} This reduces land fertility, goading investment in new technology.\textsuperscript{96} In gatherer or forest-fallow societies, all families within a tribe may cultivate communal land, and a family retains cultivation rights over a plot until the end of the normal fallow period.\textsuperscript{97} As land becomes scarce, families become more “concerned and jealous about their special rights to the old plots,” and may reduce fallow or pledge out land in order to retain their rights.\textsuperscript{98} Social differentiation occurs, not only between those with cultivation rights and those without, but also due to the emergence of feudal lords or chiefs with rights to tax cultivators.\textsuperscript{99} The cultivator’s rights may not change, but chiefs are likely to use tribute labor to clear land for their own farms, to restrict others’ rights to clear forest land, and may claim inheritance of abandoned plots.\textsuperscript{100} The eventual result is the creation of private property rights in land.\textsuperscript{101}

To Boserup’s “virtuous cycle” of population-driven technical change, a collection of other factors have been proposed as engines of individualization. Duncan (1943) has noted the importance of government regulation, contractual forms, and the “cultural milieu.”\textsuperscript{102} Hammar (1943) argues that the poverty of tenants, by limiting their productivity via malnutrition and other health effects, prevents their transformation into full owners.\textsuperscript{103} With urbanization and rising incomes, non-farmers “increase their ownership of all resources of the country including

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\textsuperscript{95} Boserup (1965), p. 13
\textsuperscript{96} Boserup (1965), p. 14
\textsuperscript{97} Boserup (1965), p. 79-80
\textsuperscript{98} Boserup (1965), p. 80-81
\textsuperscript{99} Boserup (1965), p. 82-83. Her explanation of this phenomenon is rather odd; in “East and West Africa” she characterizes it as the result of nomadic conquest of bush-fallow cultivators. While this may explain the relationships of the groups such as the Fulani their neighbors, it cannot account for the powers of indigenous chiefs.
\textsuperscript{100} Boserup (1965), p. 84-85
\textsuperscript{101} Boserup (1965), p. 86-87
\textsuperscript{102} Duncan (1943), p. 866-867
\textsuperscript{103} Hammar (1943), p. 71
While often described as a possible cause of the emergence of private rights, urbanization may therefore spur an extension of rural tenancy, while variables which widen the urban-rural income gap – Hammar (1943) identifies birth rates, health facilities and educational opportunities – will accentuate this tendency. To this, Jeffreys (1933) adds that the differing commandments in Leviticus concerning (inalienable) farmland and (alienable) urban property arise from the fact that, while the former filled a biological need, the latter had to be tailored to the “psychological needs of the money economy.” Demsetz (1967) asserts that property rights emerge to internalize externalities when the gains of internalization outweigh the costs. Though it is possible that, at each step, externalities are not explicitly under consideration, they do determine the long-run viability of any changes that occur. The historical example he considers is that of native Americans; while in Quebec, private rights over land emerged as a result of hunting externalities associated with the fur trade, the wider grazing range of game species in the southwestern plains prevented a similar development there. Negotiating costs and costs of enforcement limit the growth of private property, though the ability of individual rights to further reduce these expenses helps explain their preponderance over several property. Transactions costs that arise from size or heterogeneity may also render private property more palatable than collective regulation.

Unfortunately, explanations of private property in land are usually little more than appeals to their relative efficiency. Boserup’s model has been treated as “received gospel” by economists, particularly those from the New Institutional school. Quisumbing et al. (2001) represent it pictorially using production isoquants, in which population pressure increases the price of land relative to that of labor. The costs of switching from land-intensive shifting cultivation to “new”, labor-using systems depend on the security of tenure through the returns to investment. Their hypothesis is that “in order to provide appropriate incentives to invest in land and trees, land rights institutions for cultivated land are induced to change towards greater

104 Hammar (1943), p. 73
105 Hammar (1943), p. 75
106 Jeffreys (1933), p. 20
107 Demsetz (1967), p. 350
108 Demsetz (1967), p. 350
110 Demsetz (1967), p. 357
111 Baland and Platteau (1998), p. 645
112 Quisumbing et al. (2001), p. 8
113 Quisumbing et al. (2001), p. 9
individualization.” Just how they are induced is not stated. Similarly, Binswanger, McIntire and Udry (1989) have outlined this as a transition from “general” to “specific” rights in which initial cultivation-contingent usufruct rights are supplemented by the right to reclaim a plot left fallow, followed by rights of assignability, refusal of grazing, and finally inheritability; these develop alongside population density and farming intensity. For Duncan (1943), the problems of any existing tenure system notwithstanding, “there is always at least one reason for its persistence which is of greater moment than all others to the contrary.” Deninger and Feder (1998) similarly explain the emergence of individual rights as “induced institutional response to higher shadow prices of land to encourage longer term investments in land.” What is particularly revealing is that they admit that their “idealized process has rarely been followed in actual history,” though they claim it is still “useful to illustrate the main underlying factors” (though it is not clear what exactly these underlie, given that the transition is only hypothetical). In their view, as alternatives to communal ownership as a means of providing risk-reduction, economies of scale and public goods become available, individualization becomes more likely.

As should be obvious from the literature on sharecropping (see Singh (1989) for a good summary), efficiency is an insufficient explanation of the existence of an institution; rather, what is needed is to show that that institutional change is in the interest of a party that has the influence to effect this change through its behavior. Critiques of the New Institutional view thus summarized are themselves more recent. Baland and Platteau (1998) point out that private property is “expected to emerge spontaneously,” and that property rights theorists cannot predict what outcomes will result when the costs of privatization are prohibitive. Empirical studies of tenure systems, by focusing on the arrangements which are persistent enough to be examined, are subject to a selection bias which creates the impression that efficiency drives change. It is not immediately obvious how severe this difficulty is; following Demsetz (1967), if only efficient institutions are selected to survive, then regardless of what creates ephemeral changes, it is

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114 Quisumbing et al. (2001), p. 9
115 Binswanger, McIntire and Udry (1989), p. 133
116 Duncan (1943), p. 863
117 Deninger and Feder, (1998), p. 2
118 Deninger and Feder, (1998), p. 2
120 Baland and Platteau (1998), p. 646
121 Baland and Platteau (1998), p. 647
efficiency that drives historical development. They also note that the New Institutional school overlooks the possibility of devolution into open access regimes, and neglects the importance of the state, social capital and distributive effects. One of the most valuable steps that can be taken in this direction is to model the formation of a particular form of tenure. Unfortunately, attempts by economists to either model the development of land tenure institutions apart from sharecropping, or to study their determinants empirically have been few in number. Goldstein and Udry (2004) show that the characteristics of land and falling-rights distribution within a Ghanaian matrilineage can be well described by a screening device that identifies the truly needy. Baker (2000) has studied the optimality of primogeniture under a variety of conditions, though he does not use his model to explain its existence. Otherwise, writers such as Besley (1995) who identify factors statistically correlated with tenure security are more concerned with obtaining valid instruments than explaining historical processes.

In addition to general theories of property rights, the administrators, ethnographers and others who dealt with Africa during the colonial period adopted their own theories for the historical development of land tenure institutions – theories that allow us to identify possible determinants of agrarian change to which we may give greater scrutiny below. They are also important in understanding how early colonial land policies were conceived and implemented, and in interpreting the anthropological work that was published during the colonial period.

[Insert discussion of Lugard’s views here. I have read the relevant chapters from the Dual Mandate, but not yet looked at his Political Memoranda]

Morel (1920) argued that, whereas the European slave trade with West Africa had left the region more protective of its liberty and had strengthened the commercial “trend of mind,” owing to the failure of European traders to establish their own agricultural plantations there, in East Africa, large plantations under Arab rule had undermined freedom and initiative. This carried over into the Colonial period; whereas in West Africa export industries were large and production in the hands of Africans, policies in East Africa were designed to “favor the European planter rather than to promote the far more healthy and promising system of encouraging native

123 Morel (1920), p. 175-177
communities to develop their own land.” For Morel (1902/1968), inalienability in land in West Africa was a result of its primacy in economic life. Though land could be leased, no African would sell except when compelled by force, because land was his “wealth, his currency, his medium of exchange... his sustenance and his cash.” There was also an ideological component to his understanding; African social life – where the conception had not been destroyed by Europeans or educated Africans – was based on the premise that land is “God-given,” and any member of the community in which ownership was vested could partake in its use.

McPhee (1926) divided the development of the different characteristics of land tenure systems into separate problems with distinct explanations. The level at which authority over land was exercised, for example, mirrored the history of state formation. In the most basic stage, land was controlled by the family. Where families aggregated into tribes, as among the Ibibio, land passed into communal control. The most advanced stage, achieved in Northern Nigeria, was control by the emirs, who extracted “the maximum of revenue by means of an onerous code of taxation.” How “ownership” was conceived of depended on beliefs; where land was seen as a Mother-Goddess, ownership was “unthinkable.” Over time, this evolved into trusteeship on the part of the tribal chief, culminating in ownership by the sovereign. Alienability arose from the combination of population-driven scarcity and new crops such as cocoa, while the ability to secure land for debt required alienability as a precondition and the influence of English law of mortgage. What is interesting about this last example is that, under many actual Nigerian forms of tenure, pledging of land is permitted, but sale is not.

The West African Lands Committee (WALC) Draft Report theorized that land tenure in West Africa generally (and in Yorubaland specifically) was founded on three general principles – that the individual who clears land obtains a definite right shared by his family and descendants, that individuals enjoyed rights as part of a family, and that, even with the passing of

124 Morel (1920), p. 178
125 Morel (1902/1968), p. 174
126 Morel (1920), p. 200
127 McPhee (1926), p. 132
128 McPhee (1926), p. 133
129 McPhee (1926), p. 134
130 McPhee (1926), p. 135
131 McPhee (1926), p. 135
132 McPhee (1926), p. 140
generations, land remained the property of the original settler.\textsuperscript{133} C.W. Alexander, the Lands Commissioner for Southern Nigeria, proposed to the WALC a two-stage theory of development, which he implicitly applied to the Yoruba provinces. In the “natural and undeveloped state” which existed prior to the formation of a kingdom, land was held by the community with authority exercised by the head and elders. Transfer was generally permitted with consent of the community.\textsuperscript{134} In the “developed” stage, land was vested in the head of the community as a trustee, and his authority was exercised through delegates.\textsuperscript{135} Dennett proposed a three-stage individual-then-communal-than-social model to the committee. Land initially was owned by an individual who left his community and took undisturbed possession of as much land as he wished. As his family grew into a community, disputes between communities would lead to conquest, and through this the creation of concubines and slaves. As brothers break off to form their own houses, the communal system becomes cumbersome, and a single chief is elected by the household heads. Land initially had no value – hence the Yoruba legend that the first Oni of Ife left “nothing but the land for his youngest son.”\textsuperscript{136} In the Western and Central Provinces a fourth, “kingdom” or “national” stage had been achieved. Lloyd (1959) links recognition of permanent rights among the Yoruba to bush-fallow rotation, in which the farmer moves to the adjacent plot but clearly intends to return later to the previous site.\textsuperscript{137} Alienability arises in two stages. First, a family holds a large area which includes fallow and forest, any portion of which may be allocated. Later, as unallocated land is exhausted, families extend their boundaries through unused forest to the political frontier.\textsuperscript{138} He also notes that, while the families of early immigrants claim land was received from the Oba, later immigrants have received their claims from families, suggesting that allocation to families occurs at an early stage.\textsuperscript{139} Interestingly, while Obas even at the time he wrote received presents for allocating land “in the customary manner,” these presents were “often equivalent to the market value of the land.”\textsuperscript{140}

\textsuperscript{133} WALC, Draft Report, p. 30-32
\textsuperscript{134} WALC, Minutes, p. 123
\textsuperscript{135} WALC, Minutes, p. 123
\textsuperscript{136} WALC, Minutes, p. 390. There are alternative interpretations of this legend in which the gift of land to his youngest son is interpreted as him having received the most valuable gift bestowed by the Oni on his sons.
\textsuperscript{137} Lloyd (1959), p. 113
\textsuperscript{138} Lloyd (1959), p. 113
\textsuperscript{139} Lloyd (1959), p. 113
\textsuperscript{140} Lloyd (1959), p. 114
Uchendu (1961) theorized that traditional Igbo land tenure rested on four principles: all land is owned, land ultimately belongs to the patrilineage and is inalienable, within the lineage an individual has secure tenure for making farms and building a house, and there are no landless within the lineage. For Bridges (1938), Igbo land tenure evolved in three phases. In the first, “pioneer” phase, an individual or group moves into an unoccupied territory. As this community grows, it begins to encounter other groups; this friction gives emphasis to the need to improve land use and preserve land for the group as a whole, thus beginning the “community” phase. In the modern, “suburb” phase, one central authority is unable to control the individualization of land tenure. Population pressure drives some individuals to seek income elsewhere, and they return with new ideas about the ownership of land.\textsuperscript{141} He identifies the first phase with Boki country, the third with the densest parts of Awka, Owerri, Okkigwi and Orlu, and the rest of Igboland with the second phase or a hybrid of the first and second.\textsuperscript{142} This is the same theory laid out by Chubb (1961), and may have originated with G.I. Jones. As paraphrased by Henderson (1972), Jones’ three-phase theory is as follows. In the first, "colonization" phase, unoccupied land is claimed by nucleated communities for subsistence farming. The scarce factor is labor. In the second, "consolidation" stage, sub-communities clear their own independent farms, boundaries are established between villages, and control of land is divided below the village level. In the third phase, if population pressure is sufficient, land becomes scarce and individualized, and all farmland is absorbed by households and their gardens. For the Ibibio, Bridges (1938) adopts the theory espoused by Johnson in his intelligence report on Ukanafun. As settlements grow into villages, each with a defined area, land is divided by the Ekpuk – the highest division of the extended family – which becomes vested with ownership. As these settlements grow, land is divided further among the Ufoks (more refined divisions), and in some cases even the nuclear Idips claim ownership.\textsuperscript{143} While among the Igbo, then, Bridges (1938) believes individualization occurs as a result of new ideas rooted in return migration, parallel decentralization among the Ibibio results from population growth (and not necessarily pressure).

Case studies can to some extent remedy the theoretical deficiency in explaining the historical development of land tenure by identifying the relevant historical actors. An interesting counterpoint to Southern Nigeria can be found in pre-colonial Asante. Austin (2004b) has argued

\textsuperscript{141} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
\textsuperscript{142} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
\textsuperscript{143} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
that “there is no indication that new kinds or levels of royalties or rents were imposed on land or its natural products in response to the growth of export production of gold, kola nuts and rubber during the [nineteenth] century.”

Land was abundant in that its marginal product was zero, and as such the market for “ownership” was motivated by fiscal and political considerations such as the extraction of tribute and sovereignty over its inhabitants. Cultivation rights, on the other hand, had economic value, and landowners charged sharecrop rents for the exploitation of resources such as trees and minerals on their land. For the most part, however, these rights were free; a farmer could tend any plot cleared by himself or his matrilineal ancestors. Sharecropping in food emerged around Kumasi, but this represented a market for location, not for land qua land. Berry (2004) adds that prior to the British imposition of their interpretation of custom – that land ownership was vested in the stools but was unalienable – transfers of land between chiefs occurred both for political and fiscal reasons, though there is also evidence that chiefs could “sell” their people without selling their land. She diverges with Austin on the question of rents, arguing that “sizable cash payments” arose with (pre-colonial) rubber, though these did “increase manifold” with (colonial) cocoa. Even so, Austin (2004b) makes repeated reference to the use of slaves and pawns in agriculture (among other tasks), both on the farms of commoners and the plantations of chiefs. This suggests at minimum that some chiefs were large landowners in Asante. Further, these chiefs could acquire unfree labor through “tribute, capture or corvée” whereas commoners could only acquire it through the market. In fact, it was the abundance of land that made the supply-price of wage-labor prohibitively expensive; the existence of nearly unrestricted access to land was itself a precondition for the widespread use of slaves and pawns in production. Sharecropping, conversely, may have emerged as a method for slave owners to overcome supervision problems. This interconnectedness of land

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144 Austin (2004b), p. 103
145 Austin (2004b), p. 102
146 Austin (2004b), p. 103
147 Austin (2004b), p. 104
148 Berry (2004), p. 6. I use the term “fiscal” as opposed to “economic,” since her concern is with lesser chiefs settling their debts and paying fines through transfer of land, rather than any productive purpose.
149 Berry (2004), p. 9
150 Berry (2004), p. 21
151 See, for example, Austin (2004b), p. 120
152 Austin (2004b), p. 189. Austin is adamant that the word “market” is an appropriate term for the system of exchanging slaves and pawns during the period.
153 Austin (2004b), p. 166-167
154 Austin (2004b), p. 121
rights and agricultural slavery was also present in Southern Nigeria during the period, and will be discussed below.

3b. Sources Used

Meek (1946) wrote that “it would be impossible to exaggerate the importance of the subject of land tenure in the colonies.” The topic preoccupied colonial officials, anthropologists, judges, barristers, trading firms, and Africans themselves. Countless policy statements, testimonies, reports, and letters were produced that concerned land in the British African colonies and which provides a wealth of primary materials to elucidate the changes in how Nigerians accessed land during the late nineteenth and early twentieth centuries. The context in which these were produced, however, introduces a number of caveats that must be kept in mind in interpreting them. “Looking back,” writes Chanock (1991), “it is often not easy to see what relationship all of this discourse – administrative, anthropological, and African – bore to actual patterns of landholding, exclusion from use of land, and the accumulation of goods.” Teasing out facts from these data is one of the challenges of this project. The four principal sources of information for this study – the West African Lands Committee, missionary records, anthropological work and colonial reports, and legal records – are discussed in turn below.

*The Draft Report, Minutes, and Correspondence of the West African Lands Committee*

The existence of the West African Lands Committee (WALC) must be situated within the context of early colonial debates over land policy in West Africa – a subject whose history has been best set down by Phillips (1989). Initially assuming that the transition to private property would be quick, over “the first twenty years, colonial administrators learnt their limitations and retreated to the dream of a thriving peasantry,” with communal ownership as its cornerstone. Land problems first emerged from the inability of British firms to obtain secure claims from

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155 Meek (1946), p. v
156 Chanock (1991), p. 70
chiefs. During the 1890s, proposals to declare all land Crown Land were considered in the Gold Coast, Ashanti and the Gambia, but never carried through. “Communal” African tenures were at this stage seen as hindering development by producing an ‘owner’ for any parcel of territory – the immediate problem was not the inferiority of communal to individual tenure, but the difficulties faced by Europeans in appropriating communal lands. Alternatively, a policy of declaring all land not individually owned as “public lands” was proposed for the Gold Coast in 1897, but withdrawn in the face of opposition from lawyers, Chiefs, and even the concessionaires it was intended to help. A “totally inadequate” Concessions Ordinance was enacted in its place, which had “no power to enforce the effective working of a concession.”

Between 1908 and 1910, the chiefs of the Gold Coast alienated 7734 square miles of land for 99 years – this was one third the total area of the colony.

More success was found, however, with the 1902 Land Proclamation of Northern Nigeria, which empowered the Governor to proclaim certain areas as public land. The concern remained, however, that the colonial presence could cause land values to rise, with the profits being captured by private interests. In 1908, the Secretary of State for the Colonies, Lord Crewe, appointed a committee to examine issues of land tenure in Northern Nigeria. In Mbajekwe’s (2003) words, it “did not visit Northern Nigeria, and it never interviewed any African. It concluded that the ultimate ownership of all land in Northern Nigeria, whether occupied or not, should be vested in the colonial Government by virtue of British Conquest.”

The result was the Land and Native Rights Proclamation of 1910, which “essentially nationalized all lands in the province.” The government was empowered to assess taxes on land, prompting Geary (1913) to write that “Sir Frederick Lugard appears to think taxation is a desirable object in

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158 Phillips (1989), p. 60
162 Phillips (1989), p. 69
164 Phillips (1989), p. 68
165 Phillips (1989), p. 74
166 Lugard (1926), p. 282
167 Mbajekwe (2003), p. 127. The report and minutes of the committee were published as parliamentary papers, Cd. 5102 and Cd. 5103 of 1910.
168 Mbajekwe (2003), p. 127. Lugard, interestingly, argued that the proclamation was “largely accidental,” and resulted from the discovery of a similar German ordinance, the fact that Lugard, Giraud and Temple came together for the committee, the availability of Orr’s study of the Hausa, and the fact of a limited budget. (Letter to Wedgewood, 15 Nov 1912, in Lugard Papers, Rhodes’ House, Mss Lugard, s. 76)
itself.” Soon, the government began to consider extending this principle to the rest of its colonial possessions. A perception had emerged both in administrative circles and in the press that in the Gold Coast and southwestern Nigeria, chiefs were infringing on customary law to the detriment of their people, a “condition of affairs bound to lead to considerable mischief if permitted to continue.” In 1912, H.C. Belfield submitted his report on land policy in the Gold Coast, and made recommendations intended to limit speculation.

On June 6, 1912, Edmund Dene Morel wrote a letter to the editor of the London Times, urging that a committee be formed to assess the suitability of applying the land policy of Northern Nigeria to the other British colonies and protectorates in West Africa. Morel was the most vocal member of the so-called “Third Party” of social reformers who advocated support of communal tenure. Morel had left Elder Dempster in 1901 to found the West African Mail in 1903 – a publication from which he led the public relations offensive against the abuses of Leopold’s regime in the Congo, in the process becoming “the greatest British investigative journalist of his time.” In 1912, he was appointed to the WALC as one of eight members, with Kenelem Digby, the chair of the Northern Nigeria Lands Committee reprising his earlier role. The report of the committee was not issued, owing to Digby’s death and the outbreak of war. In order, “however, to gather up the results of this enquiry,” a sub-committee consisting of Morel, Napier and Hodgson completed a Draft Report in 1915, which was printed along with the committee’s minutes and correspondence in 1916.

The mandate of the committee and the personal views of its members shaped the evidence that it gathered. (Future Governor) Clifford’s assessment of the Committee’s position was set out clearly in a 1915 letter to Lugard:

“There are, roughly speaking, two schools of thought in the matter – the one represented by Morel, I fear the majority of the members of the Lands Committee – a body, which, I hope will never be suffered to report upon or upon whose report, I trust, no action will be taken; the other of which men like Trevor, who hold that an

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170 Phillips (1989), p. 75
171 Okonkwo (1982), p. 425
174 Lugard (1926), p. 282
175 Okonkwo (1982), p. 429
176 WALC, Draft Report, p. viii
African Colony should first and foremost be ‘a while man’s country’ are the exponents. The former wishes to trust the discretion of the native, collectively and individually in all matters relating to the alienation or managing of land; the latter wishes Government to act as land-owner and to dispose arbitrarily of property which does not belong to it. Both, each in his own line, is an extremist.”

Land tenure was a subject Morel referred to frequently in his writings; he believed that “attachment to his land is, perhaps, the ruling passion of the Negro.” He wrote in 1902 that “the system of native land tenure is essentially just, thoroughly adapted to the needs of the country and its people… [t]here can be no justification whatever for the break-up of land tenure, or for the alienation of native property, under any pretext.” He was critical of concessionaires who he believed were attempting to create a forced labor regime similar to that of the Rand in the Ashanti goldfields, and equally wary of the wide powers granted to the High Commissioner in Southern Nigeria in the name of forest preservation. In 1911, he had written of the dangers of alienation to European capitalists, which would “cheerfully turn the native agriculturalist, farmer, and trader into a ‘laborer’.” His view of the Gold Coast chiefs was that “partly through folly and ignorance, partly through cupiditiy,” they were bartering away the rights of their people. A similar threat loomed in Southern Nigeria as hundreds of communal rubber plantations were on the verge of maturity. Population growth necessitated preservation for future generations. European tenure systems were being propagated by “undesirable influences, both European and native.” Sale among the Egba was “inserting the thin edge of the wedge of their own undoing by letting in the land monopolist and speculator.” He advocated encouraging the Native Councils to pass a “Yoruba Land Act,” whose cardinal principles would be the prohibition of sale – even between Africans – and strict limits on the size, rate, and duration of leases to Europeans. He lauded the Land and Native Rights Proclamation of Northern Nigeria for

177 Clifford to Lugard, 13 Nov 1915, Rhodes’ House Library, Mss. Afr s 1525, John Holt Papers, Box 9, Folder 6
178 Morel (1904), p. 136
180 Morel (1902/1968), p. 183
181 Morel (1902/1968), p. 185
182 Morel (1911), p. 83
185 Morel (1911), p. 83
186 Morel (1911), p. 84
187 Morel (1911), p. 87
curtailing “the creation of a class of landlords, a wide field for the European speculator in land, and a general break-up of the native system.”\textsuperscript{188} Further, he conceived of the measure not as “nationalization,” but as “communalizing of the communal value,” in which rent accrued to the community rather than a landlord.\textsuperscript{189} Monopoly rent and freehold were to be kept out, and land revenue “the healthiest form of income, perhaps, for any Government,” encouraged.\textsuperscript{190} The influence of Henry George on his writings was even more apparent later on – in 1920, he referred to the “hurry of the employing class to get rich” as a curse which need not be imposed on Africa.\textsuperscript{191} He concluded that the African system of tenure was an “infinitely better, sounder and healthier system than that which the British people tolerate and suffer from in their own country.”\textsuperscript{192}

The political context in which the committee met is also important in understanding the testimony it received. Even prior to Morel’s letter to the Times, the Lagos auxiliary of the Anti-Slavery and Aborigines Protection Society (AS&APS) had been involved in the politics of land, hiring J. Egerton Shyngle to contest the Supreme Court’s decision in the Lagos foreshore case, in which the court held that Docemo’s cession in 1861 had transferred all ownership of land to the Crown.\textsuperscript{193} The Lagos auxiliary urged the parent society in London to demand that Africans be allowed to give their testimony to the committee.\textsuperscript{194} Herbert Macaulay led a deputation from the AS&APS to the acting governor in June of 1912. Several communities raised the £170 needed, and the delegation was sent in May of 1913.\textsuperscript{195} The Lagos Weekly Record Reported, “for many years, Europe has sent missionaries to Africa. For once, Africa has undertaken to send missionaries to Europe.”\textsuperscript{196} At the same time, the People’s Union of Lagos also took action on the land question. On July 6, 1912, a mass meeting was held in Lagos.\textsuperscript{197} A delegation led by J.P. Jackson was sent to Abeokuta, Ibadan, Oyo, Oshogbo, Ilesha, Ife and Ede. On each of his stops, Jackson read out a letter signed by Chief Ojora and Orisadipe Obasa which stated that the British had discovered that the Northern Nigerian “structural law of tenure was not ownership but

\textsuperscript{188} Morel (1911), p. 142
\textsuperscript{189} Morel (1911), p. 143
\textsuperscript{190} Morel (1911), p. 144
\textsuperscript{191} Morel (1920), p. 173
\textsuperscript{192} Morel (1920), p. 199
\textsuperscript{193} Okonkwo (1982), p. 425
\textsuperscript{194} Okonkwo (1982), p. 426
\textsuperscript{195} Okonkwo (1982), p. 427
\textsuperscript{196} Quoted in Okonkwo (1982), p. 427
\textsuperscript{197} People’s Union (1912), p. iii
occupancy,” referred to Chamberlain’s call for development of the colonial estates, and reminded his audience that a concession of 311 square miles had recently been given to Lever Bros. in Sierra Leone. He met not only with the Obas and Chiefs, but also held mass assemblies; at Ilesha, the claimed attendance was 20,000. How far Jackson’s tour politicized the land question is difficult to say, but the WALC committee members were very concerned that it had, and frequently asked Yoruba witnesses about his visits. From their answers, however, it appears that many Africans feared their lands were threatened for altogether different reasons. Chief Bassey Duke Ephraim had been troubled by the District Commissioner’s intimations that, unless he named a price the Provincial Commissioner thought was reasonable, the government would consider the lands it held on lease to be Crown Lands. While he argued that “we took very little notice of Mr. Jackson’s visit,” the Balogun of Ibadan claimed that, since the District Commissioner called them together to ask them for evidence, they had felt insecure as regards their position. Ezekiel Adebiyi, a Christian farmer, added that a government representative had driven farmers off their lands along the railroad lines, and had established a forest reserve, planting live trees, destroying a large number of palms between Ona Ijebu and Odo Ona, and telling the farmers there that they must pay rent to the government. Chief Dada Jogun of Ijebu Ode claimed that, when the District Commissioner spoke to the Awujale about government control of the land, the Awujale believed it was in response to an unpaid fine. The District Commissioner in Ife had unintentionally desecrated shrines around the same time he stated asking questions about custom. One Brass chief came because he had heard the government was going to tax canoes and paddles. The People’s Union was not needed to create fears that the government’s intent was to appropriate land. The Ataoja of Oshogbo informed Mr. Jackson that, owing to events at Ilorin, they had already “apprehended that something was coming.”

There are additional concerns with the quality of the evidence contained in the WALC records. Much of the evidence was provided by colonial officials. Some of the information in the

198 People’s Union (1912), p. 8
199 People’s Union (1912), p. 19
200 WALC, Minutes, p. 439
201 WALC, Minutes, p. 456-457
202 WALC, Minutes, p. 457
203 WALC, Minutes, p. 461
204 WALC, Minutes, p. 465
205 WALC, Minutes, p. 514
206 People’s Union (1912), p. 16
minutes is obscured by the incomplete information available to the colonial state. In attempting to use the WALC testimony thirty years later for his report on Benin, Rowling (1948) notes that some of the areas mentioned in the WALC evidence could not be identified – Autar, for example, might be “possibly Otta or one of the Utehs.”

Throughout the report, Committee members frame restrictive questions, interpret statements and pressure witnesses to shape the information they receive to fit their views. The Draft Report drew attention to the “evils” of individual tenure, which encouraged litigation and threatened to divorce Africans from the land, reducing them to the status of paid laborers.

Wedgewood entered into a heated debate with A.G. Boyle about the desirability of paid labor. Morel stated to Alexander that granting of concessions to Europeans would be a policy inimical to development, with which Alexander agreed.

Morel pointedly asked the representatives from the Manchester Chamber of Commerce whether a native would produce more working for himself or for a European concessionaire. After a series of leading questions, he pressured Capt. Ross to admit that the system of tenure at Oyo eliminated poverty by giving everyone access to sufficient land. Both the committee members and many of its witnesses saw a clear connection between preventing the individualization of land ownership and the stability of Indirect Rule. The belief that indirect rule depended on preservation of African land tenure permeates Morel’s writings both before and after the meetings of the WALC. The Draft Report stated that “the tribal system supplies the natural machinery for administration, and that this system depends on the maintenance of the communal land tenure.”

This view was not shared universally; Sproston, a District Commissioner who had served mainly in “bush districts” of the Central and Eastern provinces did not believe that chiefly authority was premised on communal tenure.

Almost all African testimony was delivered by educated Lagosian elites, or by holders of political authority. Though chiefs frequently disavow extensive customary powers over land in their testimonies to the committee, this may not be an accurate reflection of their actual exercise of power; speaking of the Yoruba provinces, Ward-Price (1933) notes that the authority of the

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207 Rowling (1948), p. 22  
208 WALC, Draft Report, p. 102  
209 WALC, Minutes, p. 86  
210 WALC, Minutes, p. 132  
211 WALC, Minutes, p. 299  
212 WALC, Minutes, p. 426  
213 WALC, Draft Report, p. 102  
214 WALC, Minutes, p. 239
Oba was subtended by fear of supernatural punishment. Only an exceptionally brave man would assert his customary rights against their breach by an Oba – infractions Ward-Price (1933) asserts were frequent.215 During the District Commissioner’s inquiry into the customs of Ijebu Remo, the Akarigbo was careful to limit the testimony that could be given, claiming that “he was afraid that the evidence of young, inexperienced men, if taken, would only confuse the Committee in England.”216 The Moloda of Odobolu testified that he would agree with whatever the Awujale said.217 The personalities of individual speakers also shaped their testimonies before the committee. Adegboyega Edun, secretary to the Egba United Board of Management of Abeokuta, had pursued in this capacity a “controversial policy of modernizing Abeokuta through the legalization of land sales and the attraction of British industry [which] drew the criticism of Edmund Morel and many Nigerians.”218 It should be no surprise then, that not only did he acknowledge the existence of land sales in Abeokuta, but claimed, contrary to the testimony of the Bale, “as a matter of fact, that lands are sold’” in Ibadan.219 Finally, converting African conceptions of tenure into English – a language which many of the respondents did not speak – often led to misunderstandings. When faced with a hypothetical question which began “suppose, for instance that you are a chief,” Chief Bassey Duke Ephraim responded “I am a chief.”220 The Risawe of Ilesha frequently used the term “individual ownership” in his testimony, though it became clear as he spoke that he meant nothing of the sort.

_Writings of Missionaries_

The best source of eyewitness accounts of the economic history of inland Southern Nigeria during this period comes from the writings of missionaries contained both in their published journals (such as that of Crowther and Taylor (1859)) and in the microformed archives of the Church Missionary Society (C.M.S.). I have, however, only begun to scratch the surface of what is available here, and so these do not yet form a major portion of this paper. Because there is no index for much of this, I would greatly appreciate advice on how to best use these records.

215 Ward-Price (1939), p. 12
216 WALC, Correspondence, p. 174
217 WALC, Correspondence, p. 183
218 Okonkwo (1982), p. 428
219 WALC, Minutes, p. 453
220 WALC, Minutes, p. 441
If I do narrow my focus as suggested in the conclusion, this will make things easier. Clearly, missionaries, even when Saro, were not typical Africans and did not gain access to land on the same terms as others. Mbajekwe (2003) has described the competition for their attention that occurred in and around Onitsha. Even so, the manner in which they were able to get land for their missions provides valuable information about the powers of those from whom they obtained it, and in many cases about what claims other parties made over these parcels in their objections.

During the late 1860s, the C.M.S sent a letter to all missions, advising them that it was necessary, “for the purpose of arranging some plan for simplifying the Tenure of the Landed Property belonging to the Church Missionary Society, that the particulars and probable value of that property be obtained,” and supplying them with a short questionnaire.\(^\text{221}\) The returns from the Yoruba Mission were compiled into a single place,\(^\text{222}\) though for the Niger Mission they were not; I have located that for Onitsha and its related properties from a footnote in Mbajekwe (2003), but still need to locate those for Bonny, New Calabar, Brass, Osamare, and Kippo Hile. For Akassa, Onitsha and Lakoja, all returns were filled in by Samuel Crowther in 1868, who wrote that the land was held under “freehold, but it may be taken away at any time if left unoccupied.”\(^\text{223}\) The parcels were held in Crowther’s name for the C.M.S., though no proper deeds had been obtained, since “as such things are not practiced in heathen countries. Purchase and actual possession entitles the occupier to the landed property.”\(^\text{224}\) For the Yoruba Mission, the date of these returns is 1878 – it is possible, then, that the returns were collected separately for the two halves of the C.M.S. mission. The values of the land held in Lagos were higher than in its environs; the station Faji was on a plot 240 ft, by 280 ft, by 424 ft, by 257 ft, with an estimated value (apart from the buildings atop it) of £500, while a piece measuring 200 ft by 230 ft at Oto was valued at only £50.\(^\text{225}\) Land at Arotoya had been given to the Society in 1866 by Glover when he was governor, though the land was “exceedingly marshy,” and required considerable investment to reclaim. The Breadfruit station would have yielded an estimated rent of £20 per year, were it to be let. At Ota, the mission reported that a grant of land in return for a small present granted the occupier continuous possession, but that immediately after the land was

\(^\text{221}\) C.M.S. Archives, CA 3/04/528
\(^\text{222}\) C.M.S. Archives, CA 2/014
\(^\text{223}\) C.M.S. Archives, CA 3/04/528
\(^\text{224}\) C.M.S. Archives, CA 3/04/528
\(^\text{225}\) C.M.S. Archives, CA 2/014
vacated it could be granted to another applicant. In Ondo, the mission complained that the land which had been granted them had been recently taken away, though they hoped to “have another grant of land before long.” At Oshiale, no estimate of the value could be submitted, “because the practice of selling land [was] not customary.”\textsuperscript{226} As isolated observations, these are interesting, but I am not yet sure how to incorporate these into the larger picture.

\textit{Colonial Reports and Anthropology}

[I don’t feel competent to start writing this section yet; I have not read much yet that lays out the theories of the colonial officials and anthropologists who wrote these studies and reports, or critiques of these works. The sources I am using here are papers produced by professional anthropologists, reports on specific subjects (such as Rowling’s “Report on Land Tenure in X Province”), and the various intelligence reports and annual reports available in the archives, on microform, or at Rhodes’ house. The three main issues with these sources are their timing, the circumstances under which they were conducted, and the opinions that color them. Other than the work of Northcote-Thomas and Basden, most of the in-depth professional anthropological work in Southern Nigeria did not begin until after the Aba Women’s War in 1929. Not only does this mean that a lot of the sources are retrospective and put together their histories from a mix of oral testimony and theoretical speculation, but it means that many of them were written in a context where it was believed that Indirect Rule as practiced had failed, and needed to be rebuilt to better preserve African institutions. Colonial officials often had trouble getting information, because when they started asking about land it was feared that they were planning to take it. Anthropologists cannot have been completely shielded from this. The most important part of this I need to research is the theoretical debates, e.g. between diachronists and synchronists, so that I can tell when I’m reading about the Igbo and when I’m just reading G.I. Jones’ opinions. ]

\textit{Legal Sources}

The legal sources used for this study consist primarily of judgments reported in the Nigerian Law Reports (N.L.R.), printed in 21 volumes and covering the period 1881 to 1955.

\textsuperscript{226} C.M.S. Archives, CA 2/014
Because of the time period covered by these reports, I have strayed beyond the time period covered by the title; as I access more records in the future, I will substitute earlier examples where relevant (presuming they are consistent with those cited here). In addition, I have made limited use of reported judgments of the West African Court of Appeal (W.A.C.A)\textsuperscript{227} and – where they have been reprinted in other sources – Native Court judgments. There are three advantages to the use of court records. First, reported judgments often contain summaries of the facts of each case, and are thus highly condensed sources of history. Second, because the courts were empowered by legislation to apply “Native Law and Custom,” they often contain contesting claims about the nature of land tenure, how it changed over time, and the evidence supporting these assertions. Third, the courts were themselves part of the land tenure system, as they formed a venue in which claims were advanced and adjudicated. Unfortunately, judgments delivered as to what was custom cannot be read simply as statements of fact; nor can the claims of barristers, plaintiffs and defendants be taken at face value. Not only do these reflect the interests of the participants, but the claims and declarations themselves form an integral part of the process of acquiring access to land. This is not a problem unique to Nigeria, though the unwritten nature of “custom” in this context presents its own difficulties. Beginning in 1776, Warren Hastings initiated the compilation of a ‘Code of Gentoo Laws’ in India, translated from Sanskrit by Brahmin pandits.\textsuperscript{228} The result was the “Brahminification” of Indian law – not only were Brahmin texts given precedence, but the pandits served as official “law finders” for the courts until 1864.\textsuperscript{229} Statements of customary law notwithstanding, often decisions prior to the introduction of British Courts were made on the basis of common sense, with few appeals to precedent or law.\textsuperscript{230} Not only, then, may statements about customs as law misrepresent pre-colonial practice, but the use of Nigerian chiefs as assessors could create altogether new customs. Idowu Chief Eletu, for example, in his testimony during the foreshore case surmised that a riparian grantee held rights over the waterside up to the point where the water extends over his head, though he admitted he had never learnt this as a law.\textsuperscript{231}

\textsuperscript{227} My limited use of this so far comes from the fact that most of these judgments relate to the Gold Coast, in which the court was located physically. Since there is no geographic index of cases, use of these records provides a low return per unit time.

\textsuperscript{228} Metcalf and Metcalf (2002), p. 57

\textsuperscript{229} Metcalf and Metcalf (2002), p. 58

\textsuperscript{230} Ward-Price (1939), p. 13

\textsuperscript{231} The Attorney General v. John Holt & Co. (1910) 2 N.L.R., p. 7
There are two major theories that attempt to outline the impact of the colonial period on customary law, including that of property. These are indispensable in allowing interpretation of the information contained in legal reports. The first view is associated with writers such as Kristin Mann, Richard Roberts and particularly Martin Chanock, who argue that colonialism “froze particular procedures of land distribution and patterns of land use which had arisen from the wars in the latter part of the nineteenth century.”232 Colson (1971) argued that in pre-colonial African societies individualization of land occurred only in isolated parts of West Africa, in which urbanization, population pressure and export crops created a distinction between sovereignty and ownership prior to colonial rule.233 The quotation from Gboteyi that opens this paper was simply a “potent fiction”; in actual fact, lineages frequently settled foreigners, abandoned land, and “begged” it from others.234 By contrast, during the colonial period courts were expected “to enforce long-established custom rather than current opinion.”235 In particular, “Earth Priests” came to be treated as “allocators of land and rulers of men,” regardless of their generally ritual pre-colonial status.236 In spite of this, during the colonial period even unoccupied land “became subject to highly specific rights” while citizens were converted into “land-holders.”237 Official “freedom of pronouncement” however was limited by the strength of African political leaders and lawyers, particularly in Nigeria.238

Roberts and Mann (1991) argue that, prior to colonial rule British legal forms appeared in three forms. First, traders’ Courts of Equity “sat infrequently, followed no formal procedures, and administered no fixed body of law.”239 Second, early missionaries affected law by identifying transgression with sin and demanding that converts adhere to Christian norms.240 Third, chartered companies such as the RNC and the BSAC were granted “broad legal powers” by their charters, with minimal governmental oversight.241 Under colonial rule, the application of “customary law” by Native Courts was one of the principles of Indirect Rule established in

232 Chanock (1991), p. 71
233 Colson (1971), p. 195
234 Colson (1971), p. 204
235 Colson (1971), p. 196
236 Colson (1971), p. 200
239 Roberts and Mann (1991), p. 11
240 Roberts and Mann (1991), p. 15
241 Roberts and Mann (1991), p. 15
Northern Nigeria by Lugard and later exported to the rest of the continent.242 The colonial legal system thus created a forum for the interpretation of custom in which actors “claimed that these rights were customary, or the way things had always been, to give them greater validity with Europeans and Africans.”243 Chanock (1991) adds that colonial law tended to give the “competing rights and interests” encountered “the logic of a system,”244 and to leave Africans “effectively rightless against the state.”245 Solidifying the custom that land was “communal” served both the interests of the colonial state – for whom recognizing indigenous rights as equivalent to English ones would pose “a plethora of embarrassing problems” – and Africans, for whom communalism “was a way of certifying African control of occupation, use, and allocation of land.”246 In using colonial legal sources to uncover patterns of historical change, then, we must recognize first that claims to custom were made in a political context in which Africans were asserting their rights against an acquisitive colonial state and second that the portrait of systematically arranged agrarian institutions contained in these reports masked what was in fact a “struggle between different interests to position claims as legitimate in the eyes of the colonial government.”247

This view is particularly useful in interpreting the major legal textbooks published during the later colonial period – notably those of Meek (1957), Obi (1963), Coker (1958) and Elias (1951). These suffer generally from two related problems. The first is to treat African systems of land tenure, though not as homogeneous, as being described and interpretable by a core of fundamental principles common to all African societies. In this regard, Meek (1957) is typical:

Nigeria comprises some three hundred tribal societies. Each of these has its own traditional culture, its own traditional system of social controls, and its own methods of land-holding devised to meet its own peculiar needs. It is misleading, therefore, to speak of the native customary law of land tenure’, as though there was a common customary law for the whole of Nigeria. And yet it is possible to discern certain general principles which have been evolved to meet common social and economic conditions.248

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242 Roberts and Mann (1991), p. 20
244 Chanock (1991), p. 67
245 Chanock (1991), p. 62
246 Chanock (1991), p. 66
247 Chanock (1991), p. 67
248 Meek (1957), p. 113
The point here is not that these writers failed to recognize that African societies were heterogeneous, or that their rules governing land changed over time. The difficulty is that variations over time and space are abstracted away, and the causes of heterogeneity unexplored.

In his chapter on “Village Lands,” for example, Meek (1957) recognizes that community rights may “shrink or expand with changes in social and economic conditions,” and as evidence points out that in Indonesia, if an individual exerts effort on a piece of land it creates “something of a personal identity of self and soil.”\(^{249}\) As examples of the “many variations” from the general principles he lays out, he notes that inter-village boundaries are ill-defined “among many groups of Ibo” and “among the Yoruba.”\(^{250}\)

The second major difficulty with these texts is that they treat customary law as a set of givens that can be uncovered by careful perusal of judicial decisions. The clearest example of this tendency is Elias (1951).\(^{251}\) In his chapter on the “juridical nature of rights of individuals in land,” he begins with a detailed account of the case of Lewis & ors v. Bankole (1909),\(^{252}\) from which the “two important principles we may deduce” are that Yoruba grandchildren do not have the same “plenitude” of rights as immediate children, and an individual “has anything but an absolute fee simple” in his share of family land.\(^{253}\) Similarly, Thomas v. Thomas & anor (1932)\(^{254}\) gives us “two main additions to our knowledge” in the individual member’s right of residence and his right to apply to the Court for partition and sale.\(^{255}\) There is no recognition that the decisions themselves were part of the process of shaping Nigerian land tenure, and that a multiplicity of contested practices may have existed prior to them. Lloyd (1959), in a review of Coker’s (1958) text, notes that “Yoruba customary law, to a member of the legal profession, consists of those legal rules currently accepted by the High Court; to me—and of course to most Yoruba—it consists of the rules applied in the customary courts.”\(^{256}\) Lagos had no customary courts.\(^{257}\) In spite of these difficulties, colonial legal texts of this sort are useful at providing the information they were designed to offer – the elements of land tenure systems that were common

\(^{249}\) Meek (1957), p. 124

\(^{250}\) Meek (1957), p. 125

\(^{251}\) Elias served as justice minister, Attorney-General, and Chief Justice of the Supreme Court in Nigeria, and later as President of the International Court of Justice.

\(^{252}\) 1 N.L.R. 82

\(^{253}\) Elias (1951), p. 146

\(^{254}\) 16 N.L.R. 5

\(^{255}\) Elias (1951), p. 147

\(^{256}\) Lloyd (1959), p. 105

\(^{257}\) Lloyd (1959), p. 105
across Nigerian societies and a list of the anthropological reports and legal cases that crystalized these principles in the colonial mind.

Contra Mann, Roberts and Chanock, Sara Berry has argued that “Chanock’s conclusion reflects his methodology.” Deriving his conclusions from the writings of officials and anthropologists, he has overlooked the actual records of land disputes, missing then the difference between policy and practice. In reality, land rights remained “ambiguous” and “subject to ongoing reinterpretation.” The terms on which an individual accessed land might depend on his relationship with the grantor and on how they were interpreted, rather than reflecting a fixed law. Berry (1992) cautions that indirect rule, including the courts, neither froze custom nor rebuilt it according to British misconceptions about African law; rather, it created “unresolved debates over the interpretation of tradition and its meaning” and “wove instability…into the fabric of colonial administration.” Essentially, while Chanock and others caution us to view the courts as a venue in which Africans made claims against the state, Berry warns us that they were also making claims against each other, and altered the framing of these claims over time in response to what arguments were seen favorably by those with the power to decide between them. To Lloyd’s observation, then, should be appended the point that to most Yoruba, land tenure consists of the manner in which land is accessed, and of which customary law forms only a part.

Both of these perspectives downplay the considerable role played by individual judges as personal actors in the colonial courts. Though the Supreme Court Ordinance (1876) empowered judges to apply native law and custom in cases between Africans, it did not compel them to do so. Cases need not be decided by English law, nor African law, but simply on grounds of “justice, equity and good conscience.” In Cole v. Cole (1898), justice Branford argued that he did not believe that Section 19 of the Supreme Court Ordinance bound the court to apply native law in all cases, but rather the decision to do so should depend on the circumstances. Chief Justice Rayner concurred, noting that in his lower court decision he had believed that Section 19 compelled him to apply local custom in cases where both parties were Africans. This

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258 Berry (1993), p. 103  
259 Berry (1993), p. 103  
260 Berry (1993), p. 103  
261 Berry (1992), pp. 337-338  
262 Berry (1992), p. 336  
263 See, for example Awo v. Gam (1913), 2 N.L.R., p. 97  
264 Cole v. Cole (1898), 1 N.L.R 15
interpretation marked a major shift in the application of “customary law” in the Colony. In Dede v. African Association, Ltd. (1911), Justice Weber in the lower court decision decided that he could consider statutes of limitation as laws of “general application,” which could thus be applied in Nigeria, but only if both parties had expressly agreed to contract by English law. Chief Justice Osborne argued that it was a “well-known” principle of native law that there was no period of limitation in civil suits. What emerges from a decision as a statement of true native law and custom may be little more than a judge’s personal opinion, either about what is custom or what is equitable. Especially in the earliest stages of colonial rule, judges regularly heard appeals from their own decisions.

In some decisions, the imposition of a judge’s personal will is glaring. Justice Ames was willing to set aside the Urhobo inheritance of a widow by her brother in law and to declare her the legal guardian of her children on the condition that the children were enrolled in a school managed by a Christian church, so as to prevent them from being raised in a “religious and moral vacuum.” The High Commissioner at Abeokuta cited as precedent in a 1936 decision a case from India whose name he could not remember. In some cases, however, the infiltration of personal belief is more difficult to detect. Cowen and Shenton (1994) have shown that the judgment of Viscount Haldane in the 1921 Oluwa land case was not an accurate discovery of previously unknown Yoruba custom, but rather the application of a neo-Hegelian vision of development that he had acquired from his mentor, T.H. Green. Even when they were not writing their own preferences into law, judges often sought to understand African property systems by analogy to English institutions such as joint tenancy. Even writers critical of this tendency were not opposed to its exercise, but rather to its execution – Lloyd (1959), for example, regretted that early Lagosian justices had not looked to pre-feudal modes, such as the gavelkind of Kent. This too weighs on the interpretation of colonial legal sources.

265 Dede v. African Association, Ltd. (1911), 1 N.L.R. 130
266 The Attorney General v. John Holt & Co. & ors. (1911) 2 N.L.R. 1
267 See, for example Onisiwo v. The Attorney General (1912), 2 N.L.R., p. 77 or Adanji v. Hunvoo, 1 N.L.R. 74
268 He believed that the participants in this case were “probably Urhobo” because the deceased’s half-brother lived near Warri.
269 In re: The Administrator-General’s Ordinance (1949), 19 N.L.R. 38
270 Coker v. Ogunge (1939), 14 N.L.R. 57
271 Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
272 Cowen and Shenton (1994), pp. 244-245
273 Lloyd (1959), p. 107
274 Lloyd (1959), p. 107
The use of native assessors – primarily chiefs – was necessitated by the absence of written bodies of law in most African societies. From this, several difficulties arise. Even with disinterested assessors, what emerged was not necessarily a static and well-known set of laws, but rather an entire set of often conflicting opinions. *Tot homines, quot sententiae*. Though this difficulty has been emphasized by historians, it was not always apparent to administrators; Bedwell told the WACL that there had “never been any serious difficulty in arriving at the native custom governing any particular case before the Government tribunals.” The alternative to referees was to require evidence for the proving of custom. This was itself problematic; while some judges were of the view that, following Welbeck v. Brown, a custom whose origin could be proved was invalid, others believed that native laws could be dynamic and newer customs were recognizable.278 Many of the claims of custom made by participants in the judicial process were nakedly concocted in the interests of the claimant – and judges were not ignorant of this fact. “It has many times been said,” writes Justice Abbot, “that the common law rules are dictated by common sense. Perhaps the rule enunciated by the witness in the case cited emanated from a similar source.” Justice Osborne similarly wrote that “so-called experts are usually forthcoming to bear testimony that it [custom] corresponds exactly with the views put forward by the side on whose behalf they appear.” Berry (1992) provides an illustrative quote from Kenya – “I do not remember what I said before the District Commissioner eight years ago. Tell me who summoned me to give evidence. What I said depends on whose witness I was.”

In addition to these problems of interpretation, the use of legal sources presents additional difficulties. First, it is clear that the courts represented only one of many avenues that Africans could pursue in making claims to property. Often we do not know what other measures were taken parallel to a court action, and what happened after a decision was reached – a problem compounded by the often terse nature of these reports. Second, the specific reliance on N.L.R. limits the types of cases available for investigation. The vawe majority of land cases apply to Lagos and its environs, an exceptional environment that cannot be taken as representative of Southern Nigeria in general. Third, many of the cases that have made it into these reports –

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275 Berry (1992), p. 334
276 WACL, Minutes, p. 143
277 WACL, Minutes, p. 515
278 WACL, Minutes, p. 516
279 George v. Administrator-General and Another (1955), 21 N.L.R. 85
280 Chief Kinyanjui, 1934, Quoted in Berry (1992), p. 338
especially during the earliest years most relevant to the study at hand – are cases between chiefs, either individually or as representatives of their families or communities, European companies, and the government – i.e. those wealthy and determined enough to pursue a case into a case over several years and often with the assistance of a barrister. The fact that chiefs were able to represent their communities in land cases underscored the presumption of a communal tenure deeply entwined with the powers of local political authorities. Though valuable, these cases cannot then tell us how individual Africans negotiated access to land during the late pre-colonial and early colonial periods. In the future, I would like to be able to examine the local-level native court records that are available in the National Archives at Ibadan.
4. The Dynamics of Agrarian Change

During the nineteenth and early twentieth centuries, a large number of factors operated to alter the terms on which Africans accessed land in Southern Nigeria. Some promoted the emergence of private property rights in land, while others retarded it. In general, however, it is impossible to identify certain sets of circumstances as pushing the definition of land tenure in one of two directions along a unidirectional path towards either individual or communal ownership. Rather, events and forces combined to change the value and meaning of land and to open new avenues for contesting control and access. What could produce alienability in one set of circumstances could prohibit it in another, and those who lost from either change would not accept the result as final, but would alter the terms of their arguments so as to continue in their struggles to access property. Though the focus here is on the development of private property, the actual extent of its emergence should not be overstated. A.G. Boyle, the colonial secretary of Southern Nigeria estimated in 1912 that, of 79,888 square miles of land in Southern Nigeria, only 800 acres was held under freehold by individuals, chiefs and corporations. In 1929, E.A. Miller reported that in the Warig Warifi group of Jekri Sobo Division of Warri Province, that land was communal and un-inheritable; when a man died the families in their communities had their lands re-divided. There were no boundaries between quarters. Butcher made similar observations for the Ika-Ibo of Agbor in Benin in 1931. The Uyangau of Calabar district “never” sold land, which was communal and held in the name of the town chiefs, though for the nearby Mbebban, the political officer wrote “they state they never sell land which is doubtful I think.” Private property, however, encompasses more than simply freehold tenure with full rights of alienation; other changes, such as devolution of control from the political authority to the family, the partability of inheritance, the appearance of testatory capacity, and the acquisition of *de facto* security by long alienation are important, if more subtle, are all representative of the emergence of rights in private property.

Though the general and Nigerian literatures have identified a multiplicity of influences with the potential to affect the dynamics of agrarian change, this section will focus on six of the

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281 WALC, Minutes, p. 85
282 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
283 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
284 Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 73
285 Tour of Uwet and Oban Districts, p. 64 and p. 104
most important. First, population pressure is the motive force behind Boserupian theories, and is the human converse of land scarcity. In many theories, the passage of time and the growth and geographical expansion of population are treated as one and the same. An important part of this process is the growth of cities, as the issues arising from population pressure may be very different in rural and urban contexts. Secondly, the role of the ‘legitimate’ commerce can be divided into three separate issues – contact with foreign traders and merchants, the commercialization of agriculture, and the diffusion of planted permanent crops as a new technology. Third, the nineteenth century was a period of unprecedented arrival of new people and new ideas into Southern Nigeria. European and Saro missionaries brought with them Christianity and other Western ideas, while intra-Nigerian migrants increased the ethnic and ideological heterogeneity of existing African societies. Fourth, pre-colonial states affected the control of land through their existing forms of authority, through their strength and by their weaknesses, and via the disruptions and other effects introduced by the wars which characterized much of the nineteenth century. Fifth, the advent of colonial rule in the later part of the century had multiple effects of its own. Particular attention will be given to the court system introduced by the British, and because of the wealth of material available and the early start of colonial rule here, considerable focus will be given to the case of Lagos. Finally, the expansion of slavery throughout Southern Nigeria, its incomplete suppression under British rule, and the particular forms that it took affected land tenure both in prompting accumulation of control on the part of the largest slaveowners and extending the reach of servile forms of tenure in the case of slaves and their descendents. Though the basic organization here is thematic, there are many locations for which the sources available allow for a chronology of developments to be established. To preserve continuity, I often digress from the exclusive focus of the section at hand to deal with cities such as Abeokuta, Ibadan, or Calabar more broadly.

4a. Population Pressure

Boserup’s characterization of population pressure as the driving force behind the emergence of private property in land is the most accepted hypothesis in the literature on development economics. In the African context, Illiffe has described this as the transition from a land-rich economy, in which rights over labor are of paramount importance, to one of land-
scarcity.\textsuperscript{286} Perhaps the clearest example of population pressure leading to the development of private property in land comes from Nnewi, in Onitsha Province. Here, Field (1945) found population densities of more than 1000 to the square mile, in an area which even then had had little contact with Europeans or others who could have brought with them the idea of alienability of land.\textsuperscript{287} Individual holdings had come to be practically owned outright by the occupier, and the sale of land – an admitted innovation – was a “spontaneous” response to land scarcity.\textsuperscript{288} Even so, land could not be sold to a stranger, only pledged, and though the seller could not compel redemption, he did retain a right of preemption at double the purchase price.\textsuperscript{289} Countless similar examples abound in the ethnographic literature on the Igbo that relate population pressure to the disruption of communal control. Basden (1966a) argued – based on fieldwork in the early 1900s – that among the Igbo individual ownership and sales between members of a community occurred where population was most dense. Forde (1950) made a similar observation, and also noted that permanent leases were found around Onitsha, Port Harcourt and the Eastern Railway, while mortgages were found only in Onitsha, Enugu, Aba and Port Harcourt. Green (1964) observed that, in the Agbaja village group of Owerri Province, the severity of population pressure had led almost all land to be owned outright by the 1930s. Land could be leased and pledged, but not sold. Meek (1970), in a study commissioned in direct response to the Aba Women’s War, found that land scarcity had led brave individuals to clear and cultivate communal tracts of taboo forest which, upon application of their labor, became theirs to farm, pledge or bequeath. Oral history suggests that in Mbasie, amongst the Southern Igbo, land initially was vested in the lineage community as a whole, but with population increase it passed to patrilineage and the family unit.\textsuperscript{290} In the Igbo areas, population densities varied considerably, the figures for 1938 ranged from slightly over 3 persons per square mile in Eko to 1470 in Ebeteghete.\textsuperscript{291} The greatest densities were found in a line running southeast from Onitsha to Ikot Epene.\textsuperscript{292} Though he does not posit it as a causal factor, the areas identified by Bridges (1938) as having land divided between families and in some cases even held by individuals – Onitsha, Awka, and Adniagu – are also those for which he finds that population pressure has reduced

\begin{thebibliography}{99}
\bibitem{286} Quoted in Chanock (1991), p. 66
\bibitem{287} Field (1945), p. ???
\bibitem{288} Field (1945), p. ???
\bibitem{289} Field (1945), p. ???
\bibitem{290} Isichei (1975), p. ???
\bibitem{291} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
\bibitem{292} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
\end{thebibliography}
fallow and induced continuous cropping. Population pressure can also generate primogeniture. Bridges (1938) gives the example of an Oshogbo policeman, who as eldest son of a man whose plot of land was too small to be feasibly divided, stood to inherit the whole.

It is not clear, however, that scarcity of land leads universally to individualization and alienability, nor that it cannot produce directly opposite tendencies. In an example from outside Nigeria, Wilson (1938) found the Nyakusa had curtailed lending and strengthened claims to inheritance within agnostic descent groups in response to land scarcity. Bridges (1938) believed that, while population pressure could encourage diversification into new crops, it could also lead to greater concentration on food production. One point overlooked in Boserup’s argument is the complexity of crop rotations. The Usonigbe of Benin Province, as an example, though normally cultivating a plot for one season and then leaving it to fallow for six to eight years would be compelled by declining productivity to leave the land fallow for twenty-five years or more every three or four rotations. The difficulty here is that the effect of population pressure on yields will vary according to how it coincides with the broader timing of the bush-fallow cycle. Another aspect ignored by the more general model is the stark heterogeneity in land scarcity that can arise between villages even within a small area. In Obubra Division of Ogoja Province, Weir (1929) described the Okum Tribe as having ample farming land, while for the Igbo-Emaban land for yams was “extremely scarce.” Even within a single community, heterogeneity of land quality means that, no matter how abundant land is, the best soil and the most ideal locations are always scarce. In Umor, Forde (1937) noted that farming occurred along trails, and a kepun (lineage) which lacked territory along a particular road would borrow land from other yepun along the same path in return not for money, but a gourd of wine and open recognition of the favor.

Many examples of the responses to land scarcity are ambiguous in their interpretation. In Urhobo Division of Warri, D.P. Stanfield found that by the 1930s landholdings had become highly scattered with most men having several small plots of land. Land here was owned by individuals, mostly through inheritance. Each Obie had only a “vague right” over the land of his

293 Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
294 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
295 Quoted in Chanock (1991), p. 72
297 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
298 Weir, “Intelligence Report on Obubra Division of Ogoja Province,” (1929)
sub-clan, and the right of the Senior Owe over all land “scarcely exists in practice.” Even still, sales of land were exceptional, on the grounds that such a transaction would infringe on the Owe’s rights. For several years, land-poor Utagbon (Benin Province) had borrowed land from Igo in return for seven yams tribute to the village head. Around 1930, however, Igo refused to continue this arrangement as result of their own shortage of land. An agricultural inquiry in 1947 concluded that, since palm oil production always took second place to food, it was picked up most in Igbo areas where a “vicious cycle” of land erosion had rendered food production unreliable. For the most part, both traders and the commission believed that Africans produced only enough oil to pay taxes and cover the other basic needs that could only be purchased with cash. Even so, the report argued that “the primitive yet complicated systems of ownership of trees severely limits the number that can be replaced by better varieties, properly spaced, as compared with plantation practice where both land and trees are under unified control.” In his 1939 study of sixteen Igbo individuals in Ozutem, Bende, six of the ten men were receiving cash rentals for their land, while none of the women received similar payments. The reasons for the existence of such markets, however, have nothing to do with commerce and the advent of new ideas. The two most important causes identified by Harris were the need to fallow land for four to twelve years and the desire to plant specific crops on particular types of soil. Other reasons included the fact that one’s own land had been pledged in the past and thus lost by one’s self or ancestors, the wish to farm plots adjacent to one’s own, or acquiring land for a wife’s crops that could not be planted on her husband’s plot. With the exception of acquiring adjacent land, each of these reasons presupposes scarcity – that the only land of suitable quality is already owned and must be rented, rather than simply occupied. The response to scarcity, contra Boserup, is not to reduce fallow periods, but to rent land in order to sustain them. Rental rates

299 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
300 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
301 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
305 Jack Harris, Igbo Papers, “Some Aspects of the Economics of 16 Igbo Individuals,” Rhodes’ House
306 Jack Harris, Igbo Papers, “Some Aspects of the Economics of 16 Igbo Individuals,” Rhodes’ House, p. 48
307 Jack Harris, Igbo Papers, “Some Aspects of the Economics of 16 Igbo Individuals,” Rhodes’ House, p. 48
depended both on the quality of the land and the personal relationships between the parties to the contract; if they were close enough, the rental could be zero.\textsuperscript{308}

An interesting interaction of ecology, land tenure, settlement patterns and population growth can be found among the North-Eastern Igbo and was described by Jones (1961) on the basis of fieldwork in 1929 and 1956. Composed of four principal “tribes” – the Ezza, Ikwo, Izi, and Ngbo – the North Eastern Igbo are situated between the Cross and Benue Rivers northeast of Enugu. During the nineteenth century and after, the North Eastern Igbo focused on producing yams for sale to the Ibibio and Efik via the Cross River, and on “acquiring more land on which to do this.”\textsuperscript{309} Settlement took on a clear pattern. Villages were grouped around a center, so that common activities could be focused together, but the potentially competitive use of land for agriculture would be directed outwards, such that each village had its own land which expanded outwards in a specific direction.\textsuperscript{310} Whereas, among other Igbo groups, as new communities increase in size they become autonomous, here the parent villages of Amana, Akpelu and Amagu remained unified with their satellites but became divorced from each other.\textsuperscript{311} Jones (1961) ascribes this to the particular pattern of land tenure, in which land was held not by the maximal lineage, but by the sub-tribe or tribe.\textsuperscript{312} This allowed members of a single lineage to scatter anywhere within the tribal boundaries; on marriage, couples were usually settled in a new village near the tribal boundary.\textsuperscript{313} The Igbo themselves claimed that this resulted from the method of conquering land from its original occupiers. The simplest method was to send people to settle on the land; when they could not be expelled, the original inhabitants were compelled to withdraw.\textsuperscript{314}

Urbanization and population density are conceptually similar, but the latter does not necessarily drive the former. Population densities among the Igbo are among the highest in Africa, but prior to the imposition of colonial rule, they were not known for living in large towns (though a few exceptions, such as Onitsha and Enugu did exist). Within Yorubaland, population density and urbanization were – at least in 1952 – inversely related at a Provincial level.\textsuperscript{315}

\begin{flushright}
308 Jack Harris, Igbo Papers, “Some Aspects of the Economics of 16 Igbo Individuals,” Rhodes’ House, p. 48
309 Jones (1961), p. 120
310 Jones (1961), p. 120
311 Jones (1961), p. 123
312 Jones (1961), p. 124
313 Jones (1961), p. 127
314 Jones (1961), p. 125
315 Bascom (1962), p. 701
\end{flushright}
the Yoruba, urbanization was “not the outgrowth of European acculturation.” Bascom (1955) provides examples of descriptions by European explorers as early as early as 1485 in which towns such as Benin, Ife, and Old Oyo can be identified. Yoruba farmers often lived in large towns, around which farms radiated for as much as fifteen miles. Though by the 1950s, there was some correlation between city size and cocoa production, this crop cannot explain the growth of Yoruba cities prior to its introduction. He also gives the Davis-Casis index of urbanization for Yorubaland and a number of countries in 1955 – though less urban by this measure than the United States, the Yoruba were more urban than Canada, France, Sweden, Greece, and Poland. As early as 1852, Sarah Tucker had estimated the populations of Ibadan, Ogbomosho, Abeokuta and Iseyun at 60 000, 45 000, 80 000 and 70 000, respectively – a fact made even more interesting by the comparatively recent settlements of Ibadan and Abeokuta. By the 1950s, Ibadan, Lagos and Ogbomosho were all more densely populated than New York City. Urbanism did not produce ethnic heterogeneity, and by 1952 even cosmopolitan Lagos was still more than 70% Yoruba.

The WALC Draft Report recognized that individualized land tenure had become prevalent throughout urban West Africa, and recommended that these be declared “exempted districts,” to which an altogether different land policy should be applied. At Qua Town, Calabar, for example, if an individual bought land in a town, it became individual property and could be sold to anyone the owner wished. Other examples exist were the development of private property rights developed more quickly in urban areas. The cases of Lagos, Abeokuta, Ibadan, and Calabar are each discussed in more detail below. Leith-Ross (1934) found rental markets for land and housing in Owerri Town during the early 1930s. Ward-Price (1933) argued that the only significant changes to custom that had occurred in Ondo Province were within Ondo Town itself. While cultivated land and forest land were plentiful and were not sold, out of

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316 Bascom (1955), p. 448
317 Bascom (1955), p. 448
318 Bascom (1962), p. 702
319 The average of the proportions living in towns over 5000, 10 000, 25 000, and 100 000 persons.
320 Bascom (1955), p. 447
321 Bascom (1962), p. 699
322 Bascom (1962), p. 701
323 WALC, Draft Report, p. 105
324 WALC, Correspondence, p. 197
the duty to preserve land for one’s descendents, town land was privately owned and could be sold, since the housing built on it represented the fruit of individual enterprise.325

Urbanization need not lead to private property in land, however. House property in Agbor was not saleable until at least 1936.326 In Ijebu Ode, where sale of land was “of long standing,” the restrictions on sale of town land were more cumbersome than those on country land.327 The custom of house burial was an important limitation on the development of alienability in urban areas. In Odogbolu, while farms could be sold with the consent of the family, town houses could not be sold, for to do so would be to sell the body and soul of one’s father.328 The Kwas would allow sale and individual ownership of rural land, but neither existed in the town.329 In Bende District, the Assistant District Commissioner wrote to the WALC that urban land could not be sold, not only because family members were buried under the house, but so were slaves, their wives, and copper rods. Digging up one’s ancestors was a crime punishable by death, and a man who attempted to sell urban land would be driven from the town.330 The Jekris too buried their dead under their houses.331

M bajekwe’s (2003) excellent study of Onitsha shows how the combined forces of commerce, urbanization, and missionary influence created a market for land in the latter half of the nineteenth century. By the fifteenth century, Onitsha had developed as a major trading center on the Niger River.332 Prior to the arrival of Europeans, the Obi had only limited control of Onitsha land; the patrilineage heads controlled their clan lands independent of him.333 Alexander theorized that this was because the Onitcha tribe was not indigenous. Rather than acquiring the land by conquest, the immigrant population made an agreement with the original inhabitants whereby the latter retained ownership of the land, even though the successors of the latter were to become the town’s chiefs.334 Interestingly, though, when Crowther obtained land for his mission, he was assured that he could have the land once the crops that were currently standing

325 Ward-Price (1933), p. 83-85
326 Rowling (1948), p. 28
327 Ward-Price (1933), p. 100
328 WALC, Correspondence, p. 184
329 WALC, Correspondence, p. 191
330 WALC, Correspondence, p. 192
331 Granville (1898), p. 108
332 M bajekwe (2003), p. 38
333 M bajekwe (2003), p. 51
334 WALC, Minutes, p. 129
had been cultivated.\textsuperscript{335} This suggests that the Obi did in fact have the power to eject occupiers of land, but could not deprive them of the fruits of their labor. The mission obtained several properties free of charge, as families and villages competed to “attract the novel symbol of advancement and opportunity.”\textsuperscript{336} The trading firms that followed gained lands for free at first, but as land began to acquire commercial value, a market for it emerged.\textsuperscript{337} As prices rose, landholders began to demand freehold tenure.\textsuperscript{338} During the 1870s, tensions developed between the Christian and non-Christian populations, as well as between commercial firms.\textsuperscript{339} As a result of these concerns, Consul Tait arranged in 1877 for a treaty between the King and Chiefs of Onitsha and the Crown, which would have ceded “all right and title” over the lands occupied by traders and the CMS to their occupiers, subject to reversion to the King and Chiefs after two years of vacancy.\textsuperscript{340} Upon reversion, the land could be sold to other Europeans, but were not to be occupied by Africans.\textsuperscript{341} King Anazonwu refused to sign, but was compelled to do so by Tait; he and the chiefs responded by refusing to observe its terms.\textsuperscript{342} The RNC between 1884 and 1889 signed 209 treaties in the area between Akassa and Lokoja, many of which were translated by local missionaries interested in seeking company protection.\textsuperscript{343} The text of these treaties often purported to cede land outright and permanently.\textsuperscript{344} By the 1890s, and active land market had emerged on the Onitsha waterside. The RNC, CMS and Catholic Mission all acted as land-speculators, obtaining land cheaply and then selling it at a profit.\textsuperscript{345} Conflict over land emerged during this era; one early Supreme Court case saw the RNC sue the Mgbelekeke Family in the company’s Supreme Court at Asaba and win.\textsuperscript{346} The RNC established a Land Registry in 1896, which “revolutionized” Onitsha land tenure, by providing written documentation for mortgages and loans, and providing an easy means for traders and missionaries to forge agreements with indigenous landowners so as to strengthen their own titles to land.\textsuperscript{347}

\textsuperscript{335} Mbajekwe (2003), p. 95-96  
\textsuperscript{336} Mbajekwe (2003), p. 97  
\textsuperscript{337} Mbajekwe (2003), p. 97  
\textsuperscript{338} Mbajekwe (2003), p. 97  
\textsuperscript{339} Mbajekwe (2003), p. 98  
\textsuperscript{340} Mbajekwe (2003), p. 99  
\textsuperscript{341} Mbajekwe (2003), p. 99  
\textsuperscript{342} Mbajekwe (2003), p. 100  
\textsuperscript{343} Mbajekwe (2003), p. 101-103  
\textsuperscript{344} Mbajekwe (2003), p. 102  
\textsuperscript{345} Mbajekwe (2003), p. 105  
\textsuperscript{346} Mbajekwe (2003), p. 106  
\textsuperscript{347} Mbajekwe (2003), p. 107-108
4b. ‘Legitimate’ Commerce

Lugard believed that the alienation of land to Europeans and “civilized natives” had been going on for several years before 1912, not only in Nigeria but in almost every Crown colony, “and indeed, wherever white and black come into contact.”

Hopkins (1973) famously argued that the period of legitimate commerce was one of commercialization of land. Similarly, Uba (1981) has argued that in Eastern Nigeria, commercialization of agriculture led to fragmentation of land, which was exacerbated by customary inheritance laws, population pressure, and later by government policy. Here, however, the devil is in the absence of details. Examples of course abound of leases and even sales made by chiefs to Europeans. In 1894, the chief of Idogo granted land to G.W. Neville for £60 up front and £10 per year, though the payments were not described as rent.

In some cases, a link between penetration by traders and the alienability of land can be established; the WALC Draft Report notes that in Brass, sales and purchases by families (though not by individuals) had become permissible. Pennington, the Attorney-General of Southern Nigeria, posited the same explanation for Onitsha and Bonny, noting as well that sale often occurred without the consent of the chiefs in these trading centers and was, at least in Calabar and Forcados, not confined to urban land.

G.B. Zochonis claimed in his testimony to have purchased a “large amount” of property at Lagos and Calabar, directly from African owners. The difficulty with these examples is that they establish nothing beyond the fact that Europeans traders were sometimes able to acquire land on a contractual basis; they are not evidence that similar contracts came to be used between Africans, or that these affected ideologies that existed towards land tenure. John Holt held land at Ikorun without payment of tribute, much to the dismay of the Akirun – should this be evidence of Holt’s efforts to introduce alien legal concepts, or does it simply show that he attempted to negotiate access to land on the best terms he could in any given set of circumstances? The same is true when examples of sale between Africans can be shown to exist, or where they can be shown to have been considered acceptable.

348 Letter to Wedgewood, 15 Nov 1912, in Lugard Papers, Rhode’s House, Mss Lugard, s. 76
349 Ward-Price (1933), p. 98
350 WLC, Draft Report, p. 64
351 WLC, Minutes, p. 252
352 WLC, Minutes, p. 334
353 WLC, Correspondence, p. 205
The Ibibios of Eket District, for example, while permitting sale and individual ownership, believed that these were and would remain insignificant relative to communal tenure.\textsuperscript{354} Similarly, Bishop Johson told the committee that, though individual ownership existed in Ijebu Ode, “it [was] not that which rules the life of the country.”\textsuperscript{355}

A more ambiguous case arises for the ports whose representatives before the WALC claimed that land sales were a custom since “time immemorial.” While Calabar, Brass, and Bonny had a long history of commerce with Europeans, Ijebu Ode did not. Bonny Africans could purchase land as far inland as Akwette, where they were treated as “natives,” as opposed to “strangers.”\textsuperscript{356} Land thus bought, however, was owned by the family and not the individual.\textsuperscript{357} Chief Uriah Cameron made a similar observation for Brass, adding that if not financially pressed, a family would not sell.\textsuperscript{358} At New Calabar, sale was only permitted when necessity demanded it, and only then with permission of the family.\textsuperscript{359} Sale of country land required further consent of the chief and head chief.\textsuperscript{360} Chief Herbert Jumbo told the WALC that Bonny had “had dealings with Europeans for over five hundred years, and there has never been a dispute about anything.”\textsuperscript{361} They had only been collecting rent for land on the foreshore since the time of Claude Macdonald some twenty years earlier – before then, rent was unknown. There was no pawnning of land; he told the committee that “I am nearly 60, and I have not known an instance of it. In the hinterland it is done.”\textsuperscript{362} The representative of Miller Bros. argued that this had extended inland at Calabar, Opobo and Bonny. “A good deal” of coastal Africans purchased land and country houses, which they used to produce yams, “keeping so many of their people there like a country seat.”\textsuperscript{363} These purchasers would swear no allegiance to the chief of the district in which they purchased territory, and became freeholders of the land.\textsuperscript{364} In addition, as European merchants began to move in from the coast, African traders would shift inland and establish new

\textsuperscript{354} WALC, Correspondence, p. 198

\textsuperscript{355} WALC, Correspondence, p. 218

\textsuperscript{356} WALC, Minutes, p. 445

\textsuperscript{357} WALC, Minutes, p. 445

\textsuperscript{358} WALC, Minutes, p. 511

\textsuperscript{359} WALC, Minutes, p. 446

\textsuperscript{360} WALC, Minutes, p. 447

\textsuperscript{361} WALC, Minutes, p. 442

\textsuperscript{362} WALC, Minutes, p. 442

\textsuperscript{363} WALC, Minutes, p. 473

\textsuperscript{364} WALC, Minutes, p. 473
towns which allowed them to retain their roles as middlemen.\textsuperscript{365} At Badagri, less than 50 miles from Lagos, Abasi Seriki told the District Commissioner in 1912 that the present system was very different to what it had been “formerly” – family lands were sold, and individuals would sell land to cover debts.\textsuperscript{366} The head Popo chief added that pawning, leasing and selling were new customs, while an Awori chief complained in the same inquiry that “our old customs are being broken; even strangers are taking possession of our land and houses.”\textsuperscript{367} Traders did not always disrupt African tenures, however. At Igarra, the District Commissioner found in 1911 that customs concerning tribute had been unchanged by contact with Europeans; the proportion of produce demanded had always been proportional to the amount of land.\textsuperscript{368} The amount of palm oil demanded had also not changed.\textsuperscript{369}

Even where sale what of long standing, European influence could continue to alter custom. At Brass, while sale for cash was ‘immemorial,’ the shift from having a ceremonial meeting with witnesses and palm wine to putting everything in writing was more recent.\textsuperscript{370} In addition, very few Brass families owned land – rather, most borrowed it.\textsuperscript{371} Despite private ownership and alienability of land, palms remained communal and their fruits could not be collected by outsiders.\textsuperscript{372} The Kings and Chiefs of Kula signed an agreement in 1856 with the supercargoes, sanctioned by the British consul, in which the Kula agreed to end their participation in the slave trade.\textsuperscript{373} The trading firms agreed to pay comey in return for privileges, including tax-free land for their building sites. The occupiers of this land were permitted to expel trespassers. In 1888, this comey was replaced with an export duty, over the protests of the King and Chiefs. The duty was abolished in 1899. Until this point, no rent \textit{qua} rent had been paid by the companies, but after the export duty was eliminated, Chief Dede sued the African Association for rent, claiming that in 1899 the chiefs “were deprived of all the benefits which the treaty gave them, but the traders continued to trade.” The company, in reply, argued that they had bought the land outright from King Koko. Though the lower court found for the chiefs, on appeal

\textsuperscript{365} WALC, Minutes, p. 474
\textsuperscript{366} WALC, Correspondence, p. 207
\textsuperscript{367} WALC, Correspondence, p. 207
\textsuperscript{368} WALC, Correspondence, p. 171
\textsuperscript{369} WALC, Correspondence, p. 171
\textsuperscript{370} WALC, Minutes, p. 511
\textsuperscript{371} WALC, Minutes, p. 511
\textsuperscript{372} WALC, Minutes, p. 512
\textsuperscript{373} Dede v. African Association, Ltd. (1911), 1 N.L.R. 130
it was revealed that, since 1891, import duties and personal subsidies had replaced the export duties, and the company was allowed to continue in occupation so long as these were paid. Clearly, the chiefly claims to land here were secondary to the attempt to secure rents from the presence of European traders, whatever its form. It was not the increased value of the land created leasehold, but rather the threat of lost income.

European merchants often failed to acquire land on terms they thought were adequate. In Egba and Ibadan, John Holt wrote in 1912 that “the merchant is often tricked with false documents...[and] often finds the land belongs to the family or tribe.” Not only does this suggest that in both locations individuals were making land transactions with Europeans that involved written proof of title, but that in the case of Ibadan this was expressly in violation of the wishes of the Bale and Council (discussed below). In Ijebu-Ode, one chief made the same timber concession to three or four applicants, collecting money from each of them. At Ilesha, Europeans were kept outside the town walls. The Risawe told the WALC that they were not wanted in the towns “because they are sure to take more land. They are always like that.” At Ijebu Ode, a Mr. Brown received a promise of a large tract of land, but was turned out after the Awujale heard of it. The Director of Miller Bros. told the committee that he would rather obtain land from the Government – Africans, dealt with directly, would often put a fictitious value on the land, refuse to grant a lease, or not “have anything to do with you except on prohibitive terms.” This recalcitrance could be deliberate. The Risawe of Ilesha testified that:

"Mr Banks, a European, some time ago came to Ilesha and went direct to the king of the town thinking that the king had control of the land of the country, He applied to the king, and the king asked what portion he would like, and chose a portion belonging to me. The king told him that they were not used to selling lands, and he charged him what he knew he could not pay, namely 600l. for a little piece of land, just to get rid of him because he was very importunate."

The Royal Niger Company’s influence was more than that of an ordinary trading concern, and it held quasi-governmental authority before its charter was revoked and its power replaced by British rule. Despite the treaties established by the RNC, and the transfer of their lands to the Crown under the Niger Lands Transfer Ordinance, the WALC Draft Report noted that most of

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374 John Holt Papers, Rhodes’ House, Mss Afr s. 1525, Box 9, ff 40
375 WALC, Minutes, p. 247
376 WALC, Minutes, p. 458
377 WALC, Minutes, p. 461
378 WALC, Minutes, p. 468
the land concerned “remains in the possession of natives who are quite ignorant of any alienation.” 379 Many of these lands had African villages on them, with inhabitants who knew nothing about the treaty. 380 The typical signatory to one of these treaties, if approached, “had not the slightest idea whether he had sold it, leased or, or what he had done with it.” 381 There were, however, exceptions to this pattern, mostly along the lower Niger. At Onitsha, the people of Umulari alienated land to the company in 1898. Neither the RNC nor the Crown took possession of the land, and in Egbuche & Another v. Chief Idigo & Another (1934), 382 they sued for the return of this land. The Provincial Court in the case granted them title, and set aside the leases that had been made to European firms. It had considered two rival stories about the land, and considered the 1898 agreement an “act of ownership” by the plaintiffs’ predecessors. On appeal, Justice Graham-Paul found that, though the operative clause of the agreement was “ungrammatical,” it constituted a sale which had divested the plaintiffs of their rights. Though they had claimed a customary right of reversion on abandonment, he did not believe such a custom could exist for the sort of transfer effected by the agreement. None of the parties involved could be shown to have title, so he set the Provincial Court decision aside in toto.

Isichei’s (1969) study provides another example in which the RNC’s influence over land was more greatly felt. In Asaba, opposite Onitsha, the Diokpa – the oldest man of the oldest surviving generation of the extended family – traditionally settled disputes and allocated land in the pre-colonial period. 383 As opposed to the Ngwa case, the ofo-holder, was usually a poor and despised man whose functions were generally ceremonial. 384 Slaves were used in Asaba in farming and in the production of palm oil, and each Quarter settled their slaves in a ‘camp.’ 385 Ceremonial sacrifice of slaves increased during the nineteenth century. 386 After 1854, the economy of Asaba declined; the palm oil trade was lost to Onitsha, and Asaba was reduced to a slave mart. 387 Later, by growing cotton and yams for sale to Onitsha and Aboh, as well as acting as middlemen, Asaba was able to stabilize its economy. 388 The Royal Niger Company

379 W&L, Draft Report, p. 62
380 W&L, Minutes, p. 146
381 W&L, Minutes, p. 146
382 Egbuche & Another v. Chief Idigo & Another (1934), 11 N.L.R. 140
383 Isichei (1969), p. 423
384 Isichei (1969), p. 423
386 Isichei (1969), p. 424
established their administrative headquarters at Asaba. When the company experimented with “economic seed” (presumably cash crops) and began to achieve success, the Asaba people sabotaged them, “foreseeing the possibility of the development of a plantation economy.”

The company’s holdings became a forty-acre compound surrounded by a nine-foot iron railing. In addition, “Soldier Town” served as a home for four hundred soldiers – some Yoruba, some Hausa, and some from the Gold Coast. In 1888 tensions between the company and the town erupted into violence; Asaba was bombarded and largely destroyed.

In 1907, the Awujale and chiefs were “asked by the government at the point of the Bayonet” to grant a timber concession covering 600 square miles in Ijebu. Even so, commercial interests could not dictate colonial land policy. Proclamation number 1 of 1900, which declared Southern Nigeria a protectorate, also forbade non-natives from obtaining “any interest in or right over land within Southern Nigeria from the natives without the written consent of the High Commissioner first had and obtained.” Lever Bros applied in 1908 for palm oil concessions, but the government imposed the condition that it must negotiate a separate agreement with each native community concerned – a condition that drove the company to look to the Congo Free State instead.

The views of Mosely, Lever’s representative to the WALT, were summarized unfavorably by Wedgewood – “the present system aims at not taking away from the natives anything that they require, and you say: ‘do not leave them anything which they do not require’.” Even where policy was favorable, reality might not be; Lever’s oil palm mill in Sierra Leone failed because it could not obtain a regular supply of fruit. Lord Leverhulme himself was highly critical of government support for native tenure, comparing it in a 1924 speech to a policy of supporting the rights of dukes. The racism underpinning his views was unabashed; “whatever merit the African Native has,” he argued, “it has been proved by the opportunities he has had in the United States that he has not got organizing abilities.”

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390 Isichei (1969), p. 437
391 Isichei (1969), p. 437
392 Macaulay (1912), p. 17
393 John Holt Papers, Rhodes' House, Mss Afr s. 1525, Box 9, ff 50-51
394 Berry (1992), p. 341
395 WALT, Minutes, p. 178. Mosely felt this was an accurate characterization.
396 West Africa – Palm Oil and Palm Kernels (1923) Report of a Committee Appointed by the Secretary of State for the Colonies, p. 8
397 Royal Niger Company Papers, Rhodes' House, Afr s. 2185, p. 133
398 Royal Niger Company Papers, Rhodes' House, Afr s. 2185, p. 133
Holt personally objected to the government’s restrictions on European access to land. In a 1908 letter, he noted that the company’s land in the Cameroons was acquired directly from “the native owners,” on freehold, and never for more than the cost of one year’s rent if on leasehold.\(^{399}\) In the Niger Delta, these restrictions were particularly pernicious, because of the large expenses needed to clear mangrove trees and fill swamp land.\(^{400}\) Outside of Lagos, his view was that land was “owned by local native chiefs, or the British Government in trust for the people.”\(^{401}\) More relevant to the lives of most Nigerians than the small-scale acquisition of land by Europeans for trading sites, government stations, and the rare experimental plantation is the question of how first the slave trade and later the rise of export agriculture affected the tenure of land in the Nigerian interior. Alagoa (1971) looks the Ijo-speaking portions of the Eastern Delta. Here, the lack of arable land led initial settlers to live as fishermen and salt-makers.\(^{402}\) The president of the community council, though not necessarily the oldest male, was chosen from the founding lineage. His title, amanyanabo, implied “ownership or proprietorship of the land on which the village was built,” reflecting both the scarcity of land and the fact that, in a heterodox society of multiple lineages, the founding lineage remained owner of the settlement.\(^{403}\) The long-distance and later slave trades strengthened the amanyanabo’s political and economic status.\(^{404}\) Among the Itsekiri of Warri, all land was still communal and vested in the Olu during the 1930s.\(^{405}\) Even still, commerce with Europeans had altered their systems of tenure. Not being an agricultural people, tenure was not a major issue. As land grew in value, villages made agreements demarcating their boundaries.\(^{406}\) Extraction of salt from the “salt tree” by slaves, led villages to further divide their lands between families and compounds, though the ownership thus divided was of the trees rather than of the land.\(^{407}\) In Aboh Division of Warri province, land along the main roads during the 1930s was owned by families who retained the right to return to plots left vacant, while in the “less sophisticated” areas of the province, land was re-allocated to families each farming season.\(^{408}\)

\(^{399}\) Holt to Anderson, 18 July 1908, John Holt Papers, Rhodes’ House, Mss Afr s. 1525, Box 9, ff 11
\(^{400}\) Undersecretary of State to Holt, 18 Jan 1908, John Holt Papers, Rhodes’ House, Mss Afr s. 1525, Box 9, ff 31-33
\(^{401}\) John Holt Papers, Rhodes’ House, Mss Afr s. 1525, Box 9, ff 40
\(^{402}\) Alagoa (1971), p. 271
\(^{403}\) Alagoa (1971), p. 271
\(^{404}\) Alagoa (1971), p. 273
\(^{405}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\(^{406}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\(^{407}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\(^{408}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
Among the Ngwa Igbo, before palm trees became valuable, there were no restrictions on the cutting of fruits. Individuals were entitled to those planted by themselves or their ancestors, while unplanted trees in the bush were held communally, with no restrictions on their harvest. As their value increased, “ownership” became vested in the owner of the land under them, whether the community, family, or individual. Village councils came to regulate the harvest and grew more strict with the permissible timing of harvests. By 1938, most palms whether natural or planted were reserved for the community. The extension of this control to private trees occurred after the introduction of general taxation by the government [1920s?]. Communal trees could be pledged to meet communal needs, but otherwise farmers were entitled to the produce of trees on land actually under their cultivation. Elsewhere, among the Igbo, Bridges (1938) survey provides a detailed survey of existing tenure practices, but offers little chronology or speculation as to causes. The diversity in practice that had been achieved by 1938 was astonishing – whereas in Amagunze, a chief had been recently murdered for selling land, in Onitsha W.H. Lloyd wrote that “sale of land outright has been recognized in some areas for many years and the right to do so in these areas is accorded by native law and custom after certain prescribed ceremonies have been performed.” A similar pattern emerged in Ibibio territory; while control of land grew more decentralized over time, the same was not true of palm trees, which remained under the authority of the Obong. Only the palms on “the farms where for a moment a man’s crops are growing” would be his, and only then “by mutual consent.” Even still, almost every man had some land “unhampered by communal palms.”

Jones (1989) argues that oil palms in Eastern Nigeria were considered individual property in areas where they were either scarce or had been introduced, i.e. among the Isuama and northern Igbo. Further south, they were held communally. Hard oil was produced in underpopulated areas – such as the freshwater swamps of the Niger Delta – where Edo and Igbo migrants rented rights to harvest the fruit. Further refining Jones’ thesis, Northrup (1978) argues

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409 Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938); his source for the Ngwa is an intelligence report written by Allen.
413 Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
that among the Mboli and Ndoki Igbo, the southern Ibibio, and the Ekpe Ibibio, communal management was retained, but use of the palms was "more closely regulated." In some cases, the village councils determined the times at which palms could be harvested. Among the Southern Ibibio, the right to cut palms was restricted to members of secret societies. The hinterland of Old Calabar was not developed into plantations until the 19th century; thus, the increased food shipments were produced by individual producers. "In the egalitarian hinterland" he argues, "holdings were uniformly modest in size." Palm oil was similarly produced by thousands of hinterland households. Prior to the palm oil trade oil palms were a communal resource "subject only to such regulations as were deemed necessary to maintaining public order." As their value increased, the palms were reallocated to smaller units, passing from "communal" to "lineage" or "familial" control. This was intended to "seek a balanced distribution of wealth and power...as well as to avoid centralizing political or economic power." In Umor, Forde (1937) noted that most of the marketed surplus of yams came from large, 8 acre farms, while more than 40% of farms were below the average of between half an acre and a full acre. It is possible then, that the effect of commerce on tenure is reciprocal; commercialization of agriculture may require as a precondition the sort of private rights which permit land concentration.

One important aspect of Hopkins’ (1973) argument is that the nature of the export crop is of particular importance. If it is possible that only the planting of permanent crops will establish individual "Lockean" claims to land\textsuperscript{417} then it is important to give attention the rare instances of palm planting and to the emergence of rubber and cocoa in the last decade of the nineteenth century. Berry (1987) argues that the ascent of tree crops was a vehicle for promoting private rights to land in West Africa generally, since they were considered the property of the individual who planted them.\textsuperscript{418} Further, the commercial use of trees led to their treatment as “commercial” assets.\textsuperscript{419} The “proliferation” of claims on these trees through inheritance, acquisition of rights through labor, poor documentation and migration have however inhibited individualization.\textsuperscript{420} Further complicating any picture of a linear historical trend towards individualization has been the ambiguous and changing ability of sharecroppers to base their claims to land and trees on

\textsuperscript{417} The characterization of African systems of land tenure as “Lockean” here comes from Besley (1995), though I don’t know if he is the first writer to have made the analogy.
\textsuperscript{418} Berry (1987), p. 1
\textsuperscript{419} Berry (1987), p. 1
\textsuperscript{420} Berry (1987), p. 2-3
occupation, tribute paid, and labor performed.\textsuperscript{421} Dr. Sapara noted before the WALK that there were other reasons that permanent crops could lead to the emergence of private property; they rendered the land more valuable, and created income that could be put towards the education of both the planter and his children. They could also promote avarice.\textsuperscript{422} This is not, however, a foregone conclusion. Mann (2007) notes that in Lagos, grantees of land were not able to secure greater rights over their land by erecting buildings or making similar investments.\textsuperscript{423} Whether property rights could be acquired over the oil palm by expenditure of labor is unclear. Actual planting was rare, and colonial officials often attempted to encourage maintenance such as pruning,\textsuperscript{424} under the assumption that very little labor was expended on tending the trees. This was not always blamed on laziness – Dyke (1927), summarizing yields from “cultivated,” “uncultivated,” and “semicultivated” plots in Sekondi, argued that “the Nigerian farmer has apparently already learnt long ago the lesson to be obtained from such experiments as these, and makes no serious effort to do more than cut down such of the undergrowth as interferes with his access to the trees, and to thin the palms themselves.”\textsuperscript{425} Similarly, the representative of Miller Bros referred to the before the WALK to small-scale thinning and clearing of the palm; the “extraordinary profusion of the natural tree” made it not worthwhile to cultivate.\textsuperscript{426} In spite of these reservations, there did exist cases of private rights over palm trees. Major Swanston reported that palms which had been acquired by squatters in the Sobo areas of Sapele District could be both pledged and sold.\textsuperscript{427} Tombo palms were the property of the planter in Akim, even if they stood on communal land.\textsuperscript{428}

One important aspect of this argument is its potentially recursive nature. The literature on development economics is clear that insecure property rights diminish the gains of making fixed investments. Though this disincentive may not apply as clearly in pre-colonial (and present day) West Africa, where the maxim of \textit{quicquid plantatur solo, solo cedit} need not apply, it is possible that those areas with the most “communal” tenures were those in which planting of palms and rubber were most difficult, and in turn became those whose tenures were least affected

\textsuperscript{421} Berry (1987), p. 7-10
\textsuperscript{422} WALK, Minutes, p. 263
\textsuperscript{423} Mann (2007), p. 10
\textsuperscript{424} See, for example, Dyke (1927), p. 4.
\textsuperscript{425} Dyke (1927), p. 10
\textsuperscript{426} WALK, Minutes, p. 472
\textsuperscript{427} WALK, Correspondence, p. 170
\textsuperscript{428} WALK, Correspondence, p. 197
by these new technologies. In Ibadan division, Harris argued that the tenure system was a barrier to palm planting – because “an owner of the land would materialize and then claim the trees.” Ibadan, however, came to be at the heart of the Nigerian cocoa belt. Because a tenant in Abeokuta could not plant permanent crops on leased land, poorer men would plant all of their own land to cocoa, and borrow the land they needed to grow food crops. In Aboh Division of Warri Province, only virgin land could usually be given for planting permanent crops. Pennington argued that the seven year period of immaturity for cocoa was creating a demand among planters to obtain written title to their lands. In other areas, however, the trees were communal to the whole town. It is possible that each of these different cases, by affecting the diffusion of permanent crops, differentially impacted their effects.

Palm planting was mainly an activity encouraged by the colonial authorities, and even then with very limited success. Agricultural extension created rather the perception that palm planting had “some peculiar merit of its own in Government’s eyes,” and so was treated as by Africans as separate from the rest of the agricultural system. Bridges (1938) interestingly argued that in Eastern Nigeria, the existing land tenure systems would not restrict a wealthy or influential farmer from planting permanent crops; he could easily obtain permission. For “the average man,” however, this consent would be more difficult to obtain, particularly if he were seen as in league with the government. The Oluwo of Iwo, for example, planted a number of palm trees prior to 1918. All palm planting in Sobo areas of the Western Provinces was done by chiefs, for they were most easily able to evade custom.

[Insert a paragraph here on Kola trees. As far as I’m only aware, the only study of this crop has been Agiri’s 1972 dissertation]

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429 Quotes in Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
430 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
431 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
432 WALC, Minutes, p. 253
433 WALC, Correspondence, p. 170
434 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
436 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
437 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
The rubber boom throughout West Africa was short-lived; while from 1890 to 1900, West Africa produced a large share of world rubber output, by the 1920s its contribution was negligible.\textsuperscript{438} The quality of rubber produced varied greatly, from small balls of “fine white rubber of excellent quality, known as ‘White Niger Niggers’”, to a “soft pasty substance which looks like bad honey and smells abominably,” known as ‘Niger Flake.’\textsuperscript{439} Still, it resulted in the creation of large and sometimes alienable plantations. One example is the Agilete Estate. 73 miles from Lagos and otherwise known as “Campbell’s Farm,” it was a rubber plantation covering 32 000 acres which the Royal Niger Company sought to acquire in 1910.\textsuperscript{440} It had been acquired by Agilete Lagos Rubber Estates Ltd. in 1892 on two sets of terms – as a 99 year lease form the King of Illaro and others for ten pounds per year in rent, and as a grant from the Bale and elders of Agilete for no rent so long as it was cultivated.\textsuperscript{441} The land contained more than 200 000 mature rubber trees and more than 100 000 coffee trees in an area of forest that had been largely cleared since 1892.\textsuperscript{442} Similarly, Miller Bros. held a 1500 acre rubber plantation at Sapele, for which it paid rent to five or six different communities, through the government.\textsuperscript{443} Palmer and Renner also established plantations between Sapele and Warri, using a combination of local labor and workers from Calabar.\textsuperscript{444} Though much of the rubber produced by Africans was tapped from wild trees, some also established plantations of their own, especially at Benin. These are discussed below.

The timing of the introduction of cocoa varied throughout Southern Nigeria. Experiments at Ibadan and Abeokuta began during the 1890s, and it reached Ilesha by 1896.\textsuperscript{445} Ife and Ekiti did not adopt the crop until the eve of the First World War, and in Ondo very few planters emerged until after the war.\textsuperscript{446} Cultivation of cocoa in Kukuruku division of Benin began only in 1935.\textsuperscript{447} Cocoa spread outward from Lagos in during the late nineteenth century, where traders

\begin{itemize}
\item \textsuperscript{438} West Africa – Palm Oil and Palm Kernels (1923) Report of a Committee Appointed by the Secretary of State for the Colonies, p. 4
\item \textsuperscript{439} Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 101
\item \textsuperscript{440} Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 99
\item \textsuperscript{441} “Agileté Lagos Rubber Estates Ltd.” in The Evening Standard, 2 Feb 1910, Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 103
\item \textsuperscript{442} “Agileté Lagos Rubber Estates Ltd.” in The Evening Standard, 2 Feb 1910, Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 103
\item \textsuperscript{443} WALC, Minutes, p. 468
\item \textsuperscript{444} WALC, Minutes. p. 529
\item \textsuperscript{445} Berry (1975), p. 44
\item \textsuperscript{446} Berry (1975), p. 45
\item \textsuperscript{447} Rowling (1948), p. 14
\end{itemize}
who suffered a loss of income during the trade depression of the 1880s began to experiment with the crop at Agege and Otta.\textsuperscript{448} The Government Botanical Garden at Ebute Metta made seeds available in 1888.\textsuperscript{449} The main agents of its diffusion were missionaries and traders. Most of the early planters identified by Berry (1975) were Christian converts who were encouraged by clergymen such as Charles Phillips, Thomas Harding and James Thompson.\textsuperscript{450} The crop spread from large towns to small ones.\textsuperscript{451} Berry (1975) argues that profitability cannot explain the timing of adoption. The railroad reached Abeokuta in 1897 and Ibadan in 1901, but Ekiti was no more “remote” than Ife and Okeigbo, which were themselves more remote than Ondo.\textsuperscript{452} This is not to imply that economic motives were not important in planting cocoa – Lagosian traders and soldiers demobilized after the end of the Yoruba wars in 1893 had clear incentives to find alternative sources of income.\textsuperscript{453} Bascom (1962) posits that cocoa had major effects on urban Yoruba demographics. Cocoa requires a larger share of the working-age male population than do other crops, but also enabled farmers to have the mobility to seek employment in other cities (notably Lagos); this, he argues, explains the lower male proportions of the cocoa belt cities.\textsuperscript{454} Farming, he argues, was an even more important urban occupation prior to the introduction of cocoa.\textsuperscript{455}

Many of the early experimenters with cocoa during the 1890s were Lagos entrepreneurs, who established plantations at Agege and Ikeja.\textsuperscript{456} Some landowners demanded fees for entry or cash rents from these planters, and some of the more prominent lineages used these as a major source of income.\textsuperscript{457} Others sold their land outright. In 1912, these planters held their land on a mix of purchase, lease and ‘customary’ tenures.\textsuperscript{458} Jacob Coker, Secretary of the Agege Planters’ Union, told Buchanan-Smith that the planters who wished to acquire land at Agege acquired their land directly from the landowner, and did not approach the chief.\textsuperscript{459} Coker himself had been

\textsuperscript{448} Berry (1975), p. 40
\textsuperscript{449} Berry (1975), p. 41
\textsuperscript{450} Berry (1975), p. 41-46
\textsuperscript{451} Berry (1975), p. 44
\textsuperscript{452} Berry (1975), p. 49-50
\textsuperscript{453} Berry (1975), p. 50-52
\textsuperscript{454} Bascom (1962), p. 704
\textsuperscript{455} Bascom (1962), p. 708
\textsuperscript{456} Mann (2007), p. 51
\textsuperscript{457} Mann (2007), p. 51
\textsuperscript{458} WALC, Correspondence, p. 236
\textsuperscript{459} WALC, Correspondence, p. 235
born in Abeokuta, and came to Agege from Lagos in 1891.\textsuperscript{460} He dated the buying and selling of land at Agege to 1898.\textsuperscript{461} Frederick Williams, the Union’s Secretary, alternatively told Buchanan-Smith that sale had been introduced about twenty years ago, which would put it approximately six years sooner, much closer to the introduction of cocoa.\textsuperscript{462} The practice had been adopted by the local Awori population.\textsuperscript{463} The ability to pursue a sale depended on one’s seniority within the family. The Bale of Agege told Buchanan-Smith that for undivided family land to be sold, the whole family must consent. If a junior member objected, the land could still be divided and sold, though this would not be the case if a senior member refused.\textsuperscript{464}

In many cases, it was those who already held economic and political power who benefited from the new crops, and who experienced changes to their rights. The Chief Asubaye of Efferun (Warri Province) had planted one and a half acres of rubber. Bridges’ (1938) source wrote that “planting of permanent crops is too new for any custom to have evolved, but he thinks his eldest son should inherit the permanent crops.”\textsuperscript{465} The Agricultural Department in 1928 was offering assistance to three palm plantations in the vicinity of Onitsha – those of Chief Kamaluosi and his people, Chief Ekpenyang, and Chief Ezemoo.\textsuperscript{466} By the early 1920s, there already existed large cocoa plantations at Oboko, owned by the King Duke family.\textsuperscript{467} The Alara coffee plantation in the old Lagos protectorate was sold by a chief c. 1893.\textsuperscript{468} While the chiefs of Bonny had begun to experiment with cocoa during the early 1890s, other Bini had only been planting the crop since the early twentieth century.\textsuperscript{469} Chief Walter Benigo personally had approximately 120 acres of cocoa and 120 of para rubber in 1912 – the largest plantation in Bonny.\textsuperscript{470} Chief Manilla Peppele also had a large area of cocoa. Not all plantations were established by chiefs, however. J. Awadagin Thomas testified before the WALC that he had a private plantation which he had acquired by settlement of 492 acres between Warri and

\textsuperscript{460} WALC, Correspondence, p. 235
\textsuperscript{461} WALC, Correspondence, p. 235
\textsuperscript{462} WALC, Correspondence, p. 236
\textsuperscript{463} WALC, Correspondence, p. 236
\textsuperscript{464} WALC, Correspondence, p. 237
\textsuperscript{465} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{466} Matthews, “Annual Report for 1928 on Onitsha Province,”
\textsuperscript{467} Tour of Uwet and Oban Districts, p. 146
\textsuperscript{468} WALC, Minutes, p. 258
\textsuperscript{469} WALC, Minutes, p. 441
\textsuperscript{470} WALC, Minutes, p. 444
Sapele. Though he paid a rent of £8/10/- to the chiefs, this had only been done on the insistence of the government, and he considered the land his own; he also claimed to be the only planter who owned his land in this way. Even if they did not establish their own plantations, chiefs might also increase their prestige and power by collecting tribute on land allocated to planters; the Esherefe of Ovu Inland in Sobu country, for example, collected money on grants of land for cocoa and rubber. Dennett told the WALC in 1912 that he had heard farmers complain that the number of presents they were required to give the heads of Houses had increased, and that they would prefer to pay a fixed tax. Similarly, when Ijebu lands were sold at Agbowa and Ikosi to Lagos men for coffee and cocoa plantations, the Awujale would confirm them by placing his Orisha Oko upon the land, and received a fee from the purchaser in return. Not all chiefs succeeded in this, however; Zaccheus Taylor told Buchanan-Smith that chiefs in the environs of Lagos would not receive tribute for cocoa, since it was of recent introduction. By 1938, the custom of giving tribute to chiefs for the use of wild palms had died out in Igal Division.

The case of Benin was an interesting one. Not only had rubber plantations been established, but in many cases these were not on the initiative of European firms or powerful chiefs. Rather, they were communally owned and planted by Africans. In 1912, C.W. Alexander could not recall any conflicts that had been generated by the Benin rubber plantations. In addition to rubber, teak and cabinet woods were experimented with on communal plantations in Benin prior to 1914. Not all the rubber plantations in Benin were communal; some were held privately, and the planters viewed the property “just like their own farm.” Six plantations in Sapele each had between 10,000 and 30,000 trees of para rubber, and were variously owned by chiefs, a European, and an African trader. None of the plantations were inside a Forest Reserve, though the government would have permitted it.

471 WALC, Minutes. p. 529
472 WALC, Minutes. p. 530
473 WALC, Correspondence, p. 176
474 WALC, Minutes, p. 398
475 WALC, Correspondence, p. 219
476 Bridges, “Report on the Oil Palm Survey: Igal Division, Kabba Province” (1938)
477 WALC, Minutes, p. 234
478 WALC, Minutes, p. 245
479 WALC, Minutes, p. 470
480 WALC, Minutes, p. 245
This state of affairs changed over the colonial period. The Oba informed Rowling (1948) that, “whatever the position of old,” the advent of permanent crops and the subsequent arrival of strangers had led to fears of shortage and the insistence on claims to fallow.\footnote{Rowling (1948), p. 4} In Agbor district of Benin province, trees were not “traditionally” planted outside the compound. As this changed, and as plantations were made – primarily of rubber – permanent heritable assets were thus created.\footnote{Rowling (1948), p. 26} A family wishing to establish ownership over a tract of bush in Agbor district could also do so by planting kola trees.\footnote{Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 71} A stranger’s rights in Benin could be abrogated in favor of a Bini claim.\footnote{Rowling (1948), p. 5} Ward-Price (1933) reported that permanent crops could be sold in Benin, preferably with the Enogie informed of the transaction, and if they were the land beneath them was included in the transaction.\footnote{Ward-Price (1933), p. 116} A stranger planting permanent crops without permission was liable to eviction without compensation.\footnote{Ward-Price (1933), p. 117} The rights of Bini planters were, conversely, secure.\footnote{Rowling (1948), p. 5} Interestingly, restrictions on planting did not emerge until the 1940s.\footnote{Rowling (1948), p. 26} Further, “with little else but rubber and rubber poor security,” this did not result in the creation of a market for pledge or mortgage.\footnote{Rowling (1948), p. 28} The Oba’s personal belief was that it was dangerous to let “strangers” plant permanent crops. In response, many planters sought permits to cover plantations that has already been made prior to the restrictions.\footnote{Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)} When Rowling assembled his notes on tenure in Benin, food crops caused very little conflict – litigation and charges of trespass were made only for permanent crops.\footnote{Rowling (1948), p. 6} At the same time, the only permanent rights that existed were those derived from planting cocoa, rubber, kola or bamboo.\footnote{Rowling (1948), p. 6} By 1936, the fear that these crops were crowding out food production led the Native Authority to forbid new planting not approved by the Oba.\footnote{Rowling (1948), p. 6} Permits were introduced for the planting of permanent crops around Benin city; applicants were required to apply to the village council and the Oba. The intent behind this regulation was twofold: first, it was meant to prevent the exhaustion of land available for food;

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  \item \footnote{Rowling (1948), p. 4}
  \item \footnote{Rowling (1948), p. 26}
  \item \footnote{Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 71}
  \item \footnote{Rowling (1948), p. 5}
  \item \footnote{Ward-Price (1933), p. 116}
  \item \footnote{Ward-Price (1933), p. 117}
  \item \footnote{Rowling (1948), p. 15}
  \item \footnote{Rowling (1948), p. 26}
  \item \footnote{Rowling (1948), p. 28}
  \item \footnote{Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)}
  \item \footnote{Rowling (1948), p. 5}
  \item \footnote{Rowling (1948), p. 6}
  \item \footnote{Rowling (1948), p. 6}
\end{itemize}
second, it would stop richer men from acquiring all the land around Bini villages. In Ishan Division, the Benin agricultural officer believed that the rapid success in encouraging the planting of oil palms during the early 1930s resulted from rivalry between the villages of Opoji, Ugbeun, and Ozalla.

The system of land tenure around Ibadan was changed drastically by the cocoa boom, both during the period under study and afterwards. As the Balogun told the WALC, “when they relinquished war, they took to their lands both rural and urban.” With the rise of cocoa during the early twentieth century, thousands of farmers migrated into Western Yorubaland. Around Ibadan, they were “shown” land in the uninhabited forests by hunters acting as guides. Many of these hunters also came to act as landlords, extracting ishakole and gaining political influence as suzerain to hundreds of ‘tenants’. In “the early days,” men would take what they wanted and make agreements with each other about the boundaries. They did not assume that land belonged to the Bale. The fact that Ibadan was settled by warriors strengthened the lineage control of lands. Land was not as sacred to the Ibadans as to other Yoruba, as they were not descended from farmers; Ward-Price (1933) reported in that “up to recent years they usually got outsiders to till the land for them.” In 1900, the council of Ibadan leased land to the government for a model farm at a rate of £20 per annum. In the same year, Sheppard, a “native gentleman” obtained land for gold mining without difficulty – though the plan never amounted to anything after it was revealed that he had planted his gold. By 1901, however, “the question of aliens obtaining land had become acute.” Macgregor advised the Bashorun and Council only to lease land for a term of years, and to oppose the use of surveyors; what resulted was an argument that left the status quo intact.

In 1903, several merchants claimed to hold land from a Mr. Shepherd, who had “no good title.” He had obtained land at Iddo Gate from the Bashorun, who had granted it to him after the

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494 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
495 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
496 WALC, Minutes, p. 456
497 Berry (1992), p. 343
498 Berry (1992), p. 343
499 Ward-Price (1933), p. 47
500 Berry (1975), p. 91
501 Ward-Price (1933), p. 47
504 Elgee, “The Evolution of Ibadan,” p. 14
505 Elgee, “The Evolution of Ibadan,” p. 14
market that had been established there had failed to attract traders and had fallen into disrepair.\textsuperscript{506} The Otun Bale in 1906 claimed that Shepherd had begun to spread the idea that if no rent was paid for 7 years, full ownership was conferred.\textsuperscript{507} Shepherd’s sales were later declared by the court to be invalid.\textsuperscript{508} Their parcels had had their boundaries marked out by surveyors, and they had taken out leases of up to fifty years at rentals ranging from £5 to £8 per acre.\textsuperscript{509} In the same year, a short-lived experiment with creating a special court to deal with land matters failed.\textsuperscript{510} A fifty year lease of four square miles of land to the British Cotton Growing Association (BCGA) during the following year by the Bale and Council was opposed by the chiefs because they considered it too large for experimental purposes.\textsuperscript{511} In 1905, the boundary disputes between Oshogbo and Iragbiji, Inisha and Igbaye, Akanran and Ijebu-Ode and between Ibadan and Abeokuta were all settled by arbitration.\textsuperscript{512} This did not stop Ijebu Ode from arresting Ibadan rubber tappers in 1909 on the grounds that its boundaries extended all the way to Ibadan town. For this “absurd” claim (in the views of the District Officer), the Ibadans “rightly” claimed compensation.\textsuperscript{513} In the same year, the Bale and Council leased land for the construction of a railway at a rate of £200 per year. In 1912, the attempt by J.C. Olubi to sell land over which he had no right to a London firm was struck down, with the land reverting to the chiefs to whom it belonged.\textsuperscript{514} In 1916, the Speed Commission was charged with examining the claims of non-Ibadan Africans who had paid for the use of land.\textsuperscript{515}

It was common for landowners to give permission to plant cocoa, which was taken as a grant of indefinite use.\textsuperscript{516} Pawnning and mortgage were unknown “in olden days,”\textsuperscript{517} as was rent,\textsuperscript{518} but by the 1930s permanent crops were routinely mortgaged and in some cases sold,

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\textsuperscript{506} WALC, Minutes. p. 528  
\textsuperscript{507} WALC, Minutes. p. 528  
\textsuperscript{508} WALC, Minutes. p. 392. It is not clear if the two Sheppards mentioned here are the same man; the spelling differs between Elgee and the WALC notes.  
\textsuperscript{509} Elgee, “The Evolution of Ibadan,” p. 18  
\textsuperscript{510} Elgee, “The Evolution of Ibadan,” p. 19  
\textsuperscript{511} Elgee, “The Evolution of Ibadan,” p. 19  
\textsuperscript{512} Elgee, “The Evolution of Ibadan,” p. 25  
\textsuperscript{513} Annual Report of Ibadan Native Government District for 1909, Enc. In Despatch No. 193 of 11 April 1910, p. 480  
\textsuperscript{514} Elgee, “The Evolution of Ibadan,” p. 35  
\textsuperscript{515} Ward-Price (1933), p. 64  
\textsuperscript{516} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938). His source for much of the information on Ibadan is a report compiled by Cardale.  
\textsuperscript{517} Ward-Price (1933), p. 75  
\textsuperscript{518} WALC, Correspondence, p. 202
\end{flushleft}
“presumably” with the landlord’s consent.\textsuperscript{519} The 1909 Annual Report for Ibadan stated that there was no doubt the value of land was rising in the district and that, even though sale was “universally held to be contrary to native law and usage,” it was freely leased “at moderate rents in accordance with its value.”\textsuperscript{520} These transactions became even more common after the pawnning of children was made illegal.\textsuperscript{521} By 1912, houses in the town itself were bought and sold.\textsuperscript{522} The difficulty of reclaiming land that had been built upon led to its alienation being considered outright.\textsuperscript{523} For this reason, the emergence of private property was more easily achieved in the city itself – not even “the most conservative elements” were concerned with the sale of urban land by the 1930s.\textsuperscript{524} In addition, the advent of colonial rule had lessened the political advantages from gaining adherents; whereas in former times urban land had been granted for this purpose, now the gains were larger from selling it for cash.\textsuperscript{525} A planter who sold one plot could still acquire land elsewhere. Transactions were often put into writing, in which boundaries were set, and the vendor renounced both his own rights and those of his descendents. Though technically illegal, these might still have value in the native courts.\textsuperscript{526} It is unclear whether land was sold for use in the production of food crops as well as for planting to cocoa – while Ward-Price (1933) argues that it was not, Bridges (1938) states that “a number of sales of farm land” were recorded in and around Ibadan.\textsuperscript{527} Cocoa was an investment for its planters, but not their sole means of livelihood. Pawning to middlemen in the cocoa trade was common by the time of Ward-Price’s (1933) report, but it because of the inconvenience involved for a trader in using a cocoa farm, these transactions rarely resulted in land changing hands.\textsuperscript{528}

Ishakole came to be paid in cash rather than in goods, and this was a development that can clearly be dated to the period before 1914; Berry (1975) found that “informants whose fathers had begun planting cocoa around the turn of the century stated that they had always paid

\begin{footnotesize}
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\item \textsuperscript{519} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\item \textsuperscript{520} Annual Report of Ibadan Native Government District for 1909, Enc. In Despatch No. 193 of 11 April 1910, p. 477
\item \textsuperscript{521} Ward-Price (1933), p. 75
\item \textsuperscript{522} WALC, Minutes, p. 520
\item \textsuperscript{523} Ward-Price (1933), p. 48
\item \textsuperscript{524} Ward-Price (1933), p. 50
\item \textsuperscript{525} Ward-Price (1933), p. 51
\item \textsuperscript{526} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\item \textsuperscript{527} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\item \textsuperscript{528} Ward-Price (1933), p. 77
\end{itemize}
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ishakole in cash.”

Early immigrants made only small payments uncorrelated with parcel size, but once their plantations matured they were requested to pay larger amounts of cocoa, the usual fee being a hundredweight. This latter demand appears, however, not to have become established until the 1930s, and when it was instituted its value was less than a pound – it was not, Berry (1975) argues, intended to extract economic rent. Prior to the First World War, cash presents were usually less than £2, though their value increased during and afterwards. Even by the 1970s, Berry (1975) found little evidence that the value of Ishakole had been deliberately increased as a result of land scarcity or even that it showed an upwards time trend. Cocoa also changed attitudes. Cardale argued that the views of his informants at Onipe – that it was wrong to let a single person deprive the whole family of there rights, but that such an individuals could do whatever he liked with his own share of family land – was the view of the middle class.

As the powers of families and individuals over land grew, the authority of the Bale and chiefs waned. The Speed Commission drew attention to an 1899 resolution which banned sale, and which was “disregarded by everyone who had the desire and opportunity to profit by breaches thereof, and inter alia by those who, by virtue of their position, were specially responsible for its enforcement.” By 1912, almost the whole road between Ibadan and Oshogbo was occupied by traders holding their lands on lease, and paying rent to the Ibadan Government. All had disregarded the government gazette notice, since none of them had received Government approval. The Bale Shittu in 1913 told the resident that there was no need for landlords to consult him before apportioning land. The hunters came to understand the value of ownership first, and by the 1920s, when the Bale and Chiefs began to assert their “traditional prerogative” of administration, they found themselves unable to do so. When Ward-Price (1933) visited, the Bale and three senior chiefs of Ibadan protested that there was no sale of land in the city. Other chiefs agreed that it was contrary to custom, but argued that the

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529 Berry (1975), p. 96
530 Berry (1975), p. 97
531 Berry (1975), p. 98
532 Berry (1975), p. 105
533 Berry (1975), p. 108-110
534 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
535 Quoted in Ward-Price (1933), p. 66
536 WALC, Minutes, p. 303
537 Berry (1975), p. 120
538 Berry (1975), p. 120
Bale had no power to forbid it.\textsuperscript{539} “General opinion,” on the other hand, held that families could do as they liked with land. If the Bale and Council thought that sale should be illegal, it could always be disguised as a gift.\textsuperscript{540} The Bale’s assertion that he and his council held land in trust for the people of Ibadan who were its owners was similarly not supported by public opinion. Ward-Price (1933) wrote that “the fact that the whole of the land of Ibadan is owned by the people of Ibadan means no more than the fact that the whole of the land of France is owned by the people of France.”\textsuperscript{541} Not all the Bale’s power was eroded, however. Land disputes would sometimes result in the Bale and Council taking over the land and its associated rents or ishakole.\textsuperscript{542} In 1934, the governor had ruled that “native strangers” must cease to pay rent to the Bale and Council as trustees of the community, and rather make these payments to the individual and family owners. Because they would have trouble establishing these claims in court, however, these owners did not come forward.\textsuperscript{543} Strangers, then, emboldened by long residence, claimed freehold ownership. In spite of official prohibitions on sale of land, it is clear that this rule had been violated both by individuals and by chiefs who, while publicly opposed, profited from unrestricted sale.\textsuperscript{544}

Despite these changes, what emerged from the cocoa boom in Ibadan was not by the 1930s a mirror image of English property law. As Berry (1975) has argued, cocoa “tended to modify methods and costs of acquiring rights to farm land, but did not completely disrupt the old system.”\textsuperscript{545} Not all land was obtained through sale – presents could instead be demanded that were commensurate with the wealth of the applicant.\textsuperscript{546} Berry (1975) draws an interesting contrast between Ibadan and Ondo; in the latter case, because lineage rights were much weaker historically, opposition to sale was less, and sale became more common than pawning.\textsuperscript{547} Land for cocoa planting could be given for an annual fee, with an expectation of labor service two or three times annually.\textsuperscript{548} Cash rentals also emerged as a modification of earlier practice.\textsuperscript{549}

\textsuperscript{539} Ward-Price (1933), p. 47-48
\textsuperscript{540} Ward-Price (1933), p. 50
\textsuperscript{541} Ward-Price (1933), p. 64
\textsuperscript{542} Ward-Price (1933), p. 78
\textsuperscript{543} Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
\textsuperscript{544} Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
\textsuperscript{545} Berry (1975), p. 94
\textsuperscript{546} Ward-Price (1933), p. 48
\textsuperscript{547} Berry (1975), p. 103
\textsuperscript{548} Ward-Price (1933), p. 51
\textsuperscript{549} Ward-Price (1933), p. 57
Sometimes the line between sale and other transactions could be difficult to pinpoint. The head of the Aje family told Ward-Price that “I do not call this ‘sale of land. If I wanted to sell it, I would have charged higher prices.” Most notably, very few changes occurred outside the area of cocoa planting which extended only a few miles from Ibadan; though Ward-Price (1933) was able to find a few examples of sale outside this zone, they were rare and all but one involved the sale of houses.

It is also unclear exactly what role migrant strangers played in this transformation. The Bale told the WALC that “our fathers fought for the land and their sons must inherit the land.” Berry (1975) argues that strangers were rarely cocoa planters, and were easily identifiable as not having rights. Since Ibadan tenants were Ibadans, this helped blur the distinction between landlord and tenant. Merchant firms were concentrated in land around Iddo Gate. This area was waste land which had been divided by the Bashorun among chiefs, who could not sell it, for the creation of a market. By 1912, it was entirely occupied by non-Ibadans. The Resident had advised the Council to compel aliens to register their lands at Iddo Gate, to prevent both “jumping” and secret sales, but were dissuaded from doing so by Showenmo Coker, an Egba trader who convinced them that were they to do so, the rest of Ibadan land would come under the same set of rules. Ross argued in 1912 that large areas were in fact owned by aliens, who acquired plots without the knowledge of the authorities and sold them without the consent of their grantors. A similar arrangement occurred at Ogbomosho; here, the only strangers were settled at Offa, and could be turned out “for the slightest impertinence.”

Cocoa also intensified conflicts over land in Ibadan. The Resident of Oyo noted in 1912 that conflict here was much more common than in Oyo, and related chiefly to the boundaries of farms. Sometimes land might be sold two or three times for £200 or £300 without the knowledge of the rightful owner. The most notable cases involved the Aperin and Sanni

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550 Ward-Price (1933), p. 54  
551 Ward-Price (1933), p. 79  
552 WALC, Correspondence, p. 120  
553 Berry (1975), p. 112  
554 Berry (1975), p. 112  
555 WALC, Minutes, p. 527  
556 WALC, Correspondence, p. 190  
557 WALC, Correspondence, p. 190  
558 WALC, Correspondence, p. 205  
559 WALC, Minutes, p. 427  
560 WALC, Minutes, p. 427
families. The Aperins had been settled to guard the boundary with Ijebu, but took land for itself and had been accused by the chiefs of Ibadan of “stealing” land.\textsuperscript{561} The Aperins were descendents of Obisesan, who died in 1901.\textsuperscript{562} During the 1890s he and his son had begun to accumulate tenants, and by 1905 they had 32 settlements under their jurisdiction.\textsuperscript{563} During the 1920s, a protracted dispute between them and the Sanni family began,\textsuperscript{564} which by its nature came to involve hundreds of families.\textsuperscript{565} In spite of similar disputes, Ward-Price (1933) argued that most land was secure; the difficulty was rather that if a dispute arose, the occupier had to rely on “so many unreliable factors” to defend his claims.\textsuperscript{566} In 1938, Bridges wrote of the tenure system as being “still fluid.”\textsuperscript{567} The largest families had extensive landholdings whose boundaries were well known; conflict over these would produce “extensive trouble often stirring up a whole countryside.”\textsuperscript{568}

The diffusion of planted crops could strengthen the rights of individual landholders without leading to any sort of clear ‘individualization.’ In Ishan Division of Benin Province, the theory of tenure was that permanent crops belonged to the planter, while the land beneath them did not. In practice, however, the planter would usually be left undisturbed if he did not attempt to alienate the land (while the crops themselves were not subject to this prohibition).\textsuperscript{569} A.P. Pullen also noted that, throughout the division, the right to return to a piece of land was becoming recognized during the 1930s.\textsuperscript{570} For the Abo clan of Ogoja, kola, pear, planted palm trees and mimusops were all “individual private property,” and it was an offense to take from another man’s trees.\textsuperscript{571} This was in spite of the fact that land was communal and thus was not divided between families, could not be pawned, and could not be sold.\textsuperscript{572} In some cases, all that was created was uncertainty. During the 1930s, it had not yet been decided in Aboh Division of Warri Province whether wild palms that existed on the same plot as planted seedlings should be

\textsuperscript{561} Ward-Price (1933), p. 68  
\textsuperscript{562} Berry (1975), p. 117  
\textsuperscript{563} Berry (1975), p. 118  
\textsuperscript{564} Berry (1975), p. 118  
\textsuperscript{565} Ward-Price (1933), p. 68  
\textsuperscript{566} Ward-Price (1933), p. 75  
\textsuperscript{567} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{568} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{569} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{570} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{571} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 41  
\textsuperscript{572} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 41
considered communal or otherwise. The capacity of permanent crops to produce private property was limited. In Ondo, Berry (1975) found that settlers who had set up with the permission of the Oshemawe and whose lineages had been occupying the land for generations could not claim lineage ownership. In some cases, limitations on the capacity of permanent crops to give rise to private property were put in place by colonial officials. The Deji of Akure, though he claimed it to be “native law,” stated in 1912 that the prohibition on planting cocoa and coffee had been introduced by Mr. Pinkett.

The introduction of planted permanent crops could also lead to a strengthening of communal control. Perhaps the most quoted of Yoruba proverbs concerning land tenure is “ile l’amule wo oke ko” – the tenant must not look up. Thomas Johnson told Buchanan-Smith that there was an additional proverb which stated that “the owner of a kola tree is the owner of the soil.” Deeply ingrained in pre-colonial ideologies, then, was the knowledge that “Lockean” investments could threaten the rights of landlords.

They could also be perceived as a threat, precisely they could give the planter permanent title over the land under them. Further, this objection might be raised more strenuously for the planting of traditional crops than with rubber or cocoa – Bridges (1938) cites the example of a Yoruba council that forbade planting of palm trees on the grounds that all palms are communal. The elders of the council controlled the harvest of wild palms and received as tribute a portion of the oil; this would have been upset under a planting regime. Similarly, the Agbor Sobo forbade the planting of permanent crops on the grounds that “all palms are communal.” In spite of this, prior to 1929 one chief had planted several acres of rubber. In Ijebu Remo, Ward-Price (1933) found that sale was prohibited, individual ownership wholly denied, and permanent crops planted at the tenant’s risk. This did not stop some from claiming

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573 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
574 Berry (1975), p. 92
575 WALC, Correspondence, p. 216
576 Ward-Price (1933), p. 13
577 WALC, Correspondence, p. 238
578 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
579 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938) The timing of this event is unclear.
582 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
583 Ward-Price (1933), p. 105
ownership on the basis of having planted cocoa.\textsuperscript{584} Both the Ogunkowa and Osumo of Akure stated that a foreigner who obtained land would have a deed made out specifying an annual rent, and that this would be registered with the District Commissioner. He could not plant permanent crops, because he would be then able to claim “If the land was not mine, why was I allowed to grow these?”\textsuperscript{585} The Osumo was asked why this would be a difficulty, and whether a registered deed would prevent such claims; to this he replied “yes, it would now – but I was talking of the old days.”\textsuperscript{586} This fear was not universal; the representative of the Ifes of Ijebu Ode told the WALC that cocoa would not lead to conflict, since individuals would “dare not wrest land from the members of their family who may be getting rich.”\textsuperscript{587} To give an example from well outside the time period of this essay, Ikwebuike (1975) found that in the villages of Echara, Umuaka, Okpuitumo, and Imoha, of Abakaliki Province, the introduction of rice cultivation created a movement for the community to regulate the use of swampland.

4c. New People, New Ideas

There exists a common misconception that “individual ownership of land is absolutely foreign to the mind of any African until he has begun to absorb the ideas of an alien civilization,”\textsuperscript{588} that European concepts of mortgage and freehold act as a “solvent to native law and custom,”\textsuperscript{589} and that otherwise, “the idea of sale is unknown or, if known, abhorrent to the native mind.”\textsuperscript{590} The traditional ideology of family ownership in Yoruba tenure meant that individuals traced their rights from descent from a single ancestor many generations ago. This was, of course a myth, since it was improbable that a single individual, rather than a group of kinsmen, would migrate.\textsuperscript{591} Still, it implies that family claims were grounded in a conception of historically recognized individual ownership. There exist examples of African societies little-affected by European contact and which display many of the incidents of private property. Edun objected strenuously to the argument that sale was contrary to customary law; if it were, how

\textsuperscript{584} Ward-Price (1933), p. 108
\textsuperscript{585} WALC, Correspondence, p. 217
\textsuperscript{586} WALC, Correspondence, p. 217
\textsuperscript{587} WALC, Minutes, p. 463
\textsuperscript{588} Chief Justice Maxwell of Kenya, 1919, quoted in Berry (1992), p. 342
\textsuperscript{589} WALC, Draft Report, p. 33
\textsuperscript{590} WALC, Draft Report, p. 64
\textsuperscript{591} Lloyd (1959), p. 107
could a family have enough land as its membership grew.\textsuperscript{592} Northcote-Thomas, in his study of the Sobo in 1910, noted that, though each family cleared a large plot communally, every “owner” could point to a plot of his own.\textsuperscript{593} Similarly, farmland at Ibuyo (Aba Division) was heritable private property in 1914.\textsuperscript{594} “Undoubted freehold tenure, apparently entirely of native origin” was reported in Owerri Province.\textsuperscript{595} Jeffreys (1936) provides similar quotations from Dr. Meek for Nsukka and Awgu and Richard Burton Egba (in 1863, no less) to show that “communal” ownership was not everywhere the pre-colonial norm of Southern Nigeria. Basden (1966b) found that, among the Igbo, land sales, gifts and confiscation of land for both punishment and debt collection all occurred regularly prior to British rule, despite the customary description of land as "communal." Henderson (1972) noted that in precolonial times, Onitsha people leased out less fertile southern lands to the Obosi. Indeed, Boyle testified before the WALT C that “in instances I have known, you often find, if you get to the bottom of it, individual tenure in a very roundabout way. There are individual rights, and very strong rights.”\textsuperscript{596} Dennett summarized the contradiction clearly – “according to native customary law, land is inalienable and … the sale of land is a crime against the state. But, on the other hand, land is sold, and the buyer is left in possession.”\textsuperscript{597}

There were, however, cases were such a characterization was not too far from the truth. The Oshemawe told the WALT C that before British occupation, there was no Ondo law controlling land.\textsuperscript{598} Similarly, when the Lisa was asked if there were limits on the terms of a lease, responded that “these sort of questions we have never heard before – therefore we cannot know how many years.”\textsuperscript{599} Samuel Fagbemi stated that an Ondo would not have to pay rent for land, even if he was growing cash crops for export, but presumed a foreigner might.\textsuperscript{600} This does not imply that there were no practices governing the use of land in Ondo, but rather that it was a question that had not been formally considered by either the state or many decentralized authorities. Daniel Rogers, for example, told the committee that a cash rent was accepted from

\textsuperscript{592} WALT C, Minutes, p. 453
\textsuperscript{593} Quoted in Jeffreys (1936), p. 3
\textsuperscript{594} Quoted in Jeffreys (1936), p. 3
\textsuperscript{595} Quoted in Jeffreys (1936), p. 3
\textsuperscript{596} WALT C, Minutes, p. 88
\textsuperscript{597} WALT C, Minutes, p. 395
\textsuperscript{598} WALT C, Correspondence, p. 209
\textsuperscript{599} WALT C, Correspondence, p. 211
\textsuperscript{600} WALT C, Correspondence, p. 211
strangers in order to signify that it was not a sale, whereas a similar payment would not be needed from an Ondo who would know that the land was not his.\textsuperscript{601} Though the most dogmatic versions of this argument can be dismissed out of hand, it is possible that the movement of people, both African and European, during the nineteenth century helped facilitate the development of private property rights in land.

[I am unsure how I want to deal with the remainder of this section. I am planning to discuss African migrations, the Saro and Brazillians outside of Lagos, and European missionaries in turn, before looking in greater depth at the example of Abeokuta. I need to collect a lot more information on these.]

Traditional accounts of migration do not generally stress difficulties in obtaining land. The Oban of Calabar Division claim traditionally, that the land was given to their ancestors by Itasot Ekpan; they had cut palm nuts and shot animals for him and gave him presents of fish, yams and cocoyams. In return, he had given them the land, trees, animals “an every thing on the land.”\textsuperscript{602} During the colonial period, the Yoruba production of palm oil for export in Warri, Benin, and Okitipupa was wholly supplanted by production by Sobo migrants.\textsuperscript{603} It is difficult, however, to say whether this process was already underway by 1914. The Sobo often made their own settlements – the town of Jesse, for example, was entirely Sobo.\textsuperscript{604} Sobo migrants also planted palms, though only sporadically and in small numbers.\textsuperscript{605} The rents paid by Sobo during the 1930s varied from district to district. In Asaba, each group paid a ten pound entry fee, plus an additional pound per member.\textsuperscript{606} In Ijebu, comparable rates were six shillings and fifteen shillings, respectively.\textsuperscript{607} In Ilesha, rent was paid in tins of oil. In Ondo, as rubber and later cocoa were introduced and planted, labor from outside Ondo was frequently employed.\textsuperscript{608} By the 1930s, it was said that “a gentleman cannot climb a palm tree.”\textsuperscript{609} During the 1930s, the Jekris

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\textsuperscript{601} WALC, Correspondence, p. 213
\textsuperscript{602} Quirk, “E.J. Tour in Oban Native Court Area,” 1923
\textsuperscript{603} Mackie Papers, Rhodes’ House, Letter to Abrahall, 3 May 1940, ff. 5
\textsuperscript{604} Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
\textsuperscript{605} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{606} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{607} Bridges, “Intelligence Report on Waterside Area of Ijebu Province”
\textsuperscript{608} Bridges, “Report on Ondo District” (1935), p. 1
\textsuperscript{609} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\end{footnotesize}
claimed to have “always” relied on Sobos for the harvest of palm oil. The messenger of the Owa of Idaure testified in 1912 that a stranger granted land by the Owa would pay nothing for the land, and owed no tribute. When asked why, his reply was “no reason.” When asked if the descendents of such a stranger would claim ownership by long occupation, he responded that “no one has played us that trick yet.”

[Discuss Saro and Brazilians]

Brazilians played often surprising roles in nineteenth century Nigeria. Some stayed in the country only until slavery was abolished in Brazil, before returning to that country. Others who could not afford to come to Africa send their children there to be educated. The first Catholic Church in Lagos was built c. 1880 by Marcos Cardoso, a Brazilian mechanic. Maxwell Alakija immigrated from Bahia, and quickly bought a farm at Abeokuta some time before 1878. He was also the first owner of a cotton gin in that city. His son, born in Lagos, returned to Bahia, but one of his brothers became a lawyer and chief in Abeokuta, while another joined the Lagos bar.

[Discuss missionaries and Christianity]

During Jackson’s visit to Ibadan, it was the representative of the Christian section, Rev. J. Okuseinde, who spoke of “individual ownership” as recognized by custom.

 Alien groups need not, however, bring with them new rules of land tenure. The Bini rule of primogeniture was sustained, not only among Bini, but among Yoruba migrants who arrived after 1897. The Elesi of Odogbolu testified that “the Christians are just as anxious to keep

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610 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
611 WALC, Correspondence, p. 213
612 WALC, Correspondence, p. 2
613 Turner (1942), p. 59
614 Turner (1942), p. 59
615 Turner (1942), p. 61
616 Turner (1942), p. 65
617 Turner (1942), p. 66
618 People’s Union (1912), p. 11
619 Rowling (1948), p. 11
their land for their children as we are.” 620 Similarly, a Muslim trader in Erunbe argued told an enquiry that “we have here a Mohammedan, a Christian, and a Pagan, and the land customs are exactly the same for all of us.” 621 An interesting example from Ondo involved the C.M.S. The Missions of the Band of the Evangelists used their influence in 1902 to acquire land at Okitipupua, and in 1913 the group began building a church on the site. In 1918, after the Diocesan Synod Ordinance came into force, the local Reverend Lijadu was asked to sign a document vesting the lands of the congregation in the Trustees of the Diocesan Synod. He refused, writing that, “We all need much longer time and many more lessons on the complicated European doctrine of trusts, as we believe it is full of manifold snares and dangers to our poor ignorant African landowners, to whom the righteousness of God will make us responsible if we dare to hand over their lands and properties to others without their knowledge and consent.” 622

Soon afterwards, a split occurred between the Missions of the Band and the C.M.S. The church was completed in 1923, and Lijadu dedicated it to the Missions of the Band, Ondo. The members of the group signed a document conveying the property to a council of trustees. In Jackson’s words, “Lijatu’s scruples regarding the law of trusts appears to have been overcome when his personal interests were served thereby.” 623

The social organization of Abeokuta was barely 100 years old at the time of Ward-Price’s (1933) report; this, he argued, left the chiefs with a greater control over land allotment than in Oyo. 624 Biobaku (1981) notes that Shoedeke – who was personally involved in slave trading and sought slaves as booty in war – also allocated land to newcomers at Abeokuta after its initial settlement. Because numerous persons had to obtain land at the same time, the chiefs had to “allot sites deliberately to each family to prevent confusion.” 625 Mabogunje (1961) argues that, in Abeokuta, individual ownership originated with a land scramble during the period after 1830, when towns between Abeokuta and the Egba outposts were required to waive their rights so that newcomers could access farmland. This disrupted the earlier township and family control of

620 WALC, Correspondence, p. 183
621 WALC, Correspondence, p. 189
622 Rev. Lijadu & ors v. Emogbon & ors (1937), 13 N.L.R. 167
624 Ward-Price (1933), p. 94
625 Ward-Price (1933), p. 87
land. The Eastern forest was abandoned during the wars, and new settlers were attracted there by cocoa cultivation late in the century. Chiefs of the old towns, now living in Abeokuta, re-asserted their rights over the land, giving preference in allocation to those who could trace descent to the original village. The actual sites of the old towns were "sacrosanct" with no-one having farming rights on these. Edun, the Egba Secretary, confirmed this view in 1912, noting that, while three quarters of the compounds in Ashagga were still in ruins as a result of the Dahomey raids, repatriates were returning to find the boundaries still clearly marked. Lineage control of land persisted in Egbado and Awori areas where little land was appropriated or purchased by the Egba, though among the Awori it was weakened some by export agriculture. Land sales became accepted practice between 1860 and 1880, at the same time that exports of palm products and cotton emerged. CMS missionaries were instrumental in bringing liberated slaves from Sierra Leone. Many of them owned land there, and became "intermediaries to achieve the Buxtonian ideals of Christianization, utilitarian civilization, and commercial development based on agricultural development." By 1850, there were 3000 Saro in Abeokuta. Sierra Leone purchasers were likely to interpret land transactions as sales, while the "seller" often viewed it as a gift, and thus expected gifts and other compensation in the future. Agiri (1974) makes an interesting comparison of the Awori, Egba, and Ijebu Remo. Egba agriculture expanded geographically, and settlers at Abeokuta broke with tradition by holding newly occupied land with “perpetual rights to it in complete disregard of the rights of any other previous owner.” He credits this individualization to the introduction of new ideas by the Egba Saro after 1842. By contrast, both the Awori and Ijebu Remo responded to the disruption from war by focusing on trade rather than agriculture; the Awori, in fact, had lost most of their slaves in war to the Egba.

Outright sale among the Egba dates back at least to the early 1870s; receipts from a Samuel John Peters, who bought twenty plots of land in 1874 were presented to the WALC. He stated that he had also acquired land on pawn, which could be redeemed even fifty years later by the family that had had pawned it. His own house was situated on land he had acquired in 1859 for two bottles of rum; at that time “it was customary to make presents of land if people wanted someone to live near them.” Edun argued that this was not a substantial change to

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626 WALC, Correspondence, p. 187
627 WALC, Minutes, p. 453
628 WALC, Correspondence, p. 189
629 WALC, Correspondence, p. 189
custom. While at the time of original settlement, “you would almost have to beg people to come to live with you,” the increase in the size of the community and the value added to lands by roads, fertile soil, and streams means that “you cannot expect to get it for nothing.”630 By 1910, land was bought and sold with the consent of the Alake.631 He argues that no opposition to sale occurred until the British Government made its opinions heard.632 A 1913 Order-in-Council banned sale and mortgage of land to non-Egbas, replacing a similar 1903 ordinance, and prohibited leases of more than thirty years without consent of the Alake.633 Peters confirmed that this prohibition predated the first ordinance.634 The definition of a “native of Egbaland” contained in the ordinance included both liberated slaves and non-Egba Yoruba who intended to settle permanently.635 Sales continued unreported, and were primarily to Ijebu and Lagos men attracted by the cocoa boom.636 Non-Egba Africans obtained their leases through the Alake, and were not permitted to plant trees or gather palm products.637 The prohibitions on planting kola, orange, oil palm and plantain were old, “these being the only life-trees known in the early times,” but additional restrictions on coffee and cocoa planting had been added by 1912.638

Edun argued that, while sale was known under customary law, lease was not.639 The first lease made in Egba was from the authorities to the Lagos government in 1899.640 In 1902, however, the railroad from Aro to Ibara was completed, and merchants began to approach the authorities seeking land for the establishment of trading factories. By the terms of the 1893 treaty, the Egba were not permitted to obstruct the activities of merchants, but their own law forbade ownership of land by foreigners; together, commerce and treaty obligations “forced the hands of the Egbas,” so that the only practical alternative was the introduction of leasehold tenure.641 Leases of 5 to 30 years were commonly made to traders by 1912.,642 and all leases to

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630 WALC, Minutes, p. 453
631 Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 103
632 Ward-Price (1933), p. 88
633 WALC, Minutes, p. 453
634 WALC, Correspondence, p. 189
635 WALC, Minutes, p. 455
636 Ward-Price (1933), p. 88-90
637 WALC, Correspondence, p. 186
638 WALC, Correspondence, p. 187
639 WALC, Correspondence, p. 187
640 WALC, Correspondence, p. 187
641 WALC, Correspondence, p. 187
642 WALC, Minutes, p. 452
non-Nigerians were to trading firms.\textsuperscript{643} Land and houses were commonly sold, and cocoa plantations could fetch 1s per tree.\textsuperscript{644} Pawnning of cocoa, kola and palm trees was common. Ward-Price (1933) divided the methods used to acquire private ownership into purchase at auction, ordinary purchase, gift, or cessation of a landlord’s claim.\textsuperscript{645} Despite the apparent ease with which private rights could be secured, traders continued to lobby for removal of the restrictions on alienation to non-Egba during the 1930s.\textsuperscript{646} Dr Sapara argued that at Abeokuta in 1912, whole “educated” strangers paid cash rent for access to land, “native” strangers did not; “we knew no rent before the white man came.”\textsuperscript{647} Rent paid by trading firms near the Ibara Gate was paid to individual representatives of the landowning families, and was very close to individual ownership.\textsuperscript{648} Other rights were acquired over land during this period. In 1912, the representatives of the Manchester Chamber of Commerce told the WALC that, while “only a few years ago” chiefs would forbid inhabitants from using corrugated iron to build their roofs, within recent years they had gained the right to do so.\textsuperscript{649}

\textbf{4d. Pre-Colonial States and Conditions}

Hopkins (1968) argues that, whatever the origins of the Yoruba wars, they were perpetuated after the nineteenth century by a “crisis of adaptation” in which producers were forced to respond to the suppression of the Atlantic slave trade.\textsuperscript{650} He categorizes the responses of African statesmen into four categories. First, warriors and traders developed an export commerce in palm oil, becoming “a relatively small group of large producers controlling a dependent labor force of slaves and serfs which was responsible for a considerable proportion of the palm produce shipped from Lagos.”\textsuperscript{651} In Abeokuta and Ijebu Ode, the principal chiefs each employed several hundred slaves in agriculture.\textsuperscript{652} The unspoken corollary here is that they also secured control of adequate land on which to employ them. Second, Yoruba rulers attempted to

\begin{itemize}
  \item \textsuperscript{643} WALC, Correspondence, p. 186
  \item \textsuperscript{644} Ward-Price (1933), p. 90
  \item \textsuperscript{645} Ward-Price (1933), p. 93
  \item \textsuperscript{646} Ward-Price (1933), p. 96
  \item \textsuperscript{647} WALC, Minutes, p. 266
  \item \textsuperscript{648} WALC, Minutes, p. 266
  \item \textsuperscript{649} WALC, Minutes, p. 298
  \item \textsuperscript{650} Hopkins (1968), p. 587
  \item \textsuperscript{651} Hopkins (1968), p. 587-588
  \item \textsuperscript{652} Hopkins (1968), p. 588
\end{itemize}
control legitimate trade by imposing taxes on trade.\textsuperscript{653} Third, some continued to export slaves in spite of the prohibition from ports such as Porto Novo that remained outside British control.\textsuperscript{654} Finally, the military leaders used force to “plunder and to exact tribute.”\textsuperscript{655} Large areas of no-man’s land developed between the warring city states.\textsuperscript{656} From Hopkins’ (1968) analysis, then, we should expect Yoruba states to have had two effects on land during the nineteenth century – extension of control by state officials for their own private gain, and heightened insecurity for those farmers threatened by war. The Kingdom of Benin is considered in greater detail below, while the trading states of the Niger Delta have to some extent already been dealt with above. The Eastern Provinces present a more interesting problem – many did not have “states” in any way that was understood by Europeans until after the anthropological studies that followed on the Aba Women’s War. Haig wrote of the Abo Clan of Ogoja, for example, that there was “no such thing” as an ancient form of government here – all non-religious authority was decentralized into special societies.\textsuperscript{657} This section considers impact of change within the pre-colonial polities of Ibadan, Ondo, Benin and Warri on the development of private property rights in land, before briefly discussing the importance of another characteristic of pre-colonial systems of social organization – agnicatic and cognatic lineages.

When Ibadan revolted against Maye, the Ife general in command, he raised an army including Egba soldiers to whom he promised a right of return to the lands from which they had been driven.\textsuperscript{658} Maye was defeated by a combined force of Ibadan and the Northern Oyo, and Ibadan began to grow.\textsuperscript{659} After the new Oyo was formed by Atiba, Ibadan took over the military role. Its appearance was “more that of a huge war camp than a town,”\textsuperscript{660} and by 1862 the city was fortified with triple walls.\textsuperscript{661} Victory in the war with Ijaye left it the dominant power in Yorubaland.\textsuperscript{662} The military leadership was shaped by the fact that the army was a “Collection of

\textsuperscript{653} Hopkins (1968), p. 589  
\textsuperscript{654} Hopkins (1968), p. 589  
\textsuperscript{655} Hopkins (1968), p. 590  
\textsuperscript{656} Hopkins (1968), p. 590  
\textsuperscript{657} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 19  
\textsuperscript{658} Elgee, “The Evolution of Ibadan,” p. 3  
\textsuperscript{659} Elgee, “The Evolution of Ibadan,” p. 3  
\textsuperscript{660} Elgee, “The Evolution of Ibadan,” p. 3  
\textsuperscript{661} Elgee, “The Evolution of Ibadan,” p. 4  
\textsuperscript{662} Ward-Price (1933), p. 44
private personal armies made up of such loyal followers.”\(^663\) The Balogun led an army whose core consisted of members of his lineage and his slaves. Those slaves not employed in war were used on his farms, while some were given specific tasks, as with the Hausa and Fulani who tended to his livestock.\(^664\) The Balogun Ibikunle, during the 1950s, was said to be owner of territory at Ogbere and at Odo-Ona – a “wide expanse of farm land, extensive as far as the city wall at Adesegun.”\(^665\) He was expected to be able to “fight, farm, and trade.”\(^666\) He was also entitled to tribute from the conquered towns.\(^667\) Still, no Bale ever claimed ownership of all the Ibadan land.\(^668\) Ibadan itself had managed to acquire most of the old territory of the Owo Egba, and thus “had access to an extensive area of land, stretching from half way between modern Oyo and Ibadan in the north, to the borders of the Ife kingdom in the south.”\(^669\) In these territories, the Bale told the WACL that “each company or head man selected his own farms, lands, and put his followers on the land.”\(^670\) During the 1850s, Hinderer wrote that almost everyone in Ibadan was engaged in farming.\(^671\) Its Oko Egan – the farms too far away to be cultivated by daily commuters – became permanent farm villages settled by women, children, “and large numbers of slaves,” sometimes more than six hundred on a single Oko Egan.\(^672\) Chiefs responsible for feeding their followers would sometimes have five or six Oko Egan and the same number of Oko Etile nearer to Ibadan.\(^673\) It would appear, then, that in the militarist state of Ibadan the war chiefs held not only large numbers of slaves as soldiers, but also came to possess large holdings of land with which to feed their dependants. Similarly, at Nupe, the Princes each had large farms worked by slaves, which were needed both as labor and as tribute to Sokoto, of which Nupe was a vassal.\(^674\)

In 1877, the Ekitis rebelled against Ibadan rule, forming an alliance with the Ijeshas that came to be known as the Ekitiparapo.\(^675\) Though it received Egba support, the Ekitiparapo was

\(^{663}\) Awe (1973), p. 67
\(^{664}\) Awe (1973), p. 67
\(^{665}\) Awe (1973), p. 67
\(^{666}\) Awe (1973), p. 68; Awe cites Oroge (1971) for this point.
\(^{667}\) Awe (1973), p. 68
\(^{668}\) WACL, Correspondence, p. 202
\(^{669}\) Awe (1973), p. 69
\(^{670}\) WACL, Correspondence, p. 201
\(^{671}\) Awe (1973), p. 69. Contrast this with Ward-Price’
\(^{672}\) Awe (1973), p. 69-70
\(^{673}\) Awe (1973), p. 70
\(^{674}\) Royal Niger Company Papers, Rhodes’ House, Afr s. 2185, p. 67
\(^{675}\) Berry (1975), p. 16
not able to defeat Ibadan, and war between these cities continued until a negotiated truce during the early 1890s.\textsuperscript{676} One group of refugees in Ife who had fled Oyo during the nineteenth century warfare came to be known as the Modakekes. Though they did not side with it openly, many of the Modakekes, they sympathized with the Ekitiparapo.\textsuperscript{677} At the end of the Ibadan-Ilorin war in 1902, a portion of the Ibadan army settled at Modakeke, near Ife, because they were dissatisfied that the Oni of Ife had not supported them. A treaty for their removal was drafted, but never carried out, and eventually the issue was settled in 1909 with the inhabitants removed to Ibadan territory.\textsuperscript{678} Demands from Ife chiefs and families for payment of ishakole were made during the 1930s from Modakekes who had never paid it in the past.\textsuperscript{679} During the 1940s, these disputes moved into the courts, and were eventually settled against the Modakekes, who were declared tenants of lands they had occupied for more than a century.\textsuperscript{680} A parallel case occurred in Benin, where strangers – albeit only those originating from East of the Niger – who had not had rents demanded of them for more than thirty years were asked for cash payments during the 1940s.\textsuperscript{681}

The meaning of “ownership” in African tenure was one that confounded colonial officials, judges, the lands committee, and others, especially in describing the rights of political authorities. The word “trusteeship” was often used to cover this ambiguity. The Oshemawo of Ondo, in claiming that he “owned” all the land of Ondo, argued that

“As the head is to a man’s body, so is the Osemowe to the Ondos, what belongs to a man’s hand or food belongs to the head – what belongs to the head belongs to the food or hand – but the head is the most honorable portion and directs the remainder of the body.”\textsuperscript{682}

The Ondo tradition of origin claims that two twins banished from Ife settled at Ondo. The satellite towns of Ondo, the Ishan, in order to secure their autonomy, frequently claim direct descent from Ife.\textsuperscript{683} The largest of these, Odigbo, had its claims to land recognized by the Oshemowes as far as the intermediate town of Agbabu in 1916.\textsuperscript{684} G.B. Williams believed that the

\begin{itemize}
\item\textsuperscript{676} Berry (1975), p. 17
\item\textsuperscript{677} Berry (1975), p. 18
\item\textsuperscript{678} Annual Report of Ibadan Native Government District for 1909, Enc. In Despatch No. 193 of 11 April 1910, p. 479
\item\textsuperscript{679} Barry (1992), p. 343
\item\textsuperscript{680} Berry (1975), p. 112-115
\item\textsuperscript{681} Rowling (1948), p. 36
\item\textsuperscript{682} WALC, Correspondence, p. 210
\item\textsuperscript{683} Bridges, “Report on Ondo District” (1935), p. 5
\item\textsuperscript{684} Bridges, “Report on Ondo District” (1935), p. 6
\end{itemize}
Odigbos and Araromi held land under dispute with Ondo at the time of occupation only because
the land was not needed at that time. Odigbo had been decimated by smallpox in 1898. These
centripetal and centrifugal claims came to be pursued through the courts during the
colonial period. A conflict over forestry royalties in 1914 was intensified by the claim that Ondo
people were farming on Odigbo land and “putting up boards.” In Sumo and Patako v. Ogeguwa (1915), the chiefs of Odigbo in Ondo sought to evict a man who had occupied 31 acres
in 1909 with the permission of the Oshemowe, but without their consent. In the alternative,
they wanted a yearly rent. Duncombe, the Agricultural Officer who judged the case, found that
the Oshemawo by custom should have first informed the chiefs, but allowed the man to stay on
any land he had cultivated “at the Oshemowe’s pleasure,” provided that he paid 31 shillings to
the chiefs. At a meeting with the District Officer in 1916, the Ondo advanced the counterclaim
that Odigbos had been putting up similar boards at Eluju. The District Officer himself felt that
the dispute was not urgent and that, historically, there was no boundary between the two towns –
they were, after all, one people. This led to the 1916 agreement mentioned above, in which the
Oshemowe acknowledged their rights in return for appreciation of his “overlordship,” though it
is unclear that this agreement was actually signed. Within two years, he reversed his stance, in
part because the Odigbo began to demand cash rents from all Ondo settlers. Though the “old
custom” was that a settler must seek permission from the Oshemowe, who directs him to the
head of the community in question, it is unlikely that the Odigbo were consulted over leases
made by the Oshemowe at Adigbo. In 1919, it was written that the Bale of Odigbo required the
Oshemowe’s consent to lease land.

Oral tradition states that the first king of Benin occupied his land with the consent of the
Ogifa, the chief who owned land in Benin City. Future kings continued to pay tribute to the
Ogifa. Interestingly, while the evidence collected before the WALC suggested that, theoretically

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685 Bridges, “Report on Ondo District” (1935), Appendix 9
687 Bridges, “Report on Ondo District” (1935), Appendix 7
688 Bridges, “Report on Ondo District” (1935), Appendix 9
689 Bridges, “Report on Ondo District” (1935), Appendix 9
690 Bridges, “Report on Ondo District” (1935), Appendix 7
691 Bridges, “Report on Ondo District” (1935), Appendix 7
693 Bridges, “Report on Ondo District” (1935), p. 28
694 Bridges, “Report on Ondo District” (1935), p. 28. Bridges does not provide a source for where this was written.
695 WALC, Minutes, p. 391
at least, all land in the Benin kingdom belonged to the Oba, who collected tribute and administered the land through his chiefs, this claim was made at a time when there had been no Oba since the Benin expedition fifteen years earlier. Iyamu testified that village boundaries were fixed by the King, and that villages which failed to bring presents to the Oba would be broken and not permitted to farm until payment was made. The rhetorical claim that all land belonged to the Oba distinguished Benin from the Yoruba kingdoms. While land in Benin city came under the direct authority of the Oba, rural land was administered by subordinate Enogies who were expected to apply Bini law in the villages under their authority. Beneath them, the Odionwere dealt with petty questions. As Bedwell told the WALC, the British “found a system by which the King of Benin parcelled out his territories to certain chiefs, who were accountable to him for so much a year, and he did not mind what each one did with his people or land.” Rowling (1948) surmises that the chiefs who provided testimony were attempting to emphasize their own powers. Benin had been populated by sparse and autonomous villages prior to the advent of the Obas from Ife, and even after, strangers who received their authority to settle from the Oba obtained land from the villages, despite the land having come under the Oba’s “control and ownership.” It is puzzling, then, that the Benin chiefs would not, like the Lagos Idejo, claim ultimate ownership in the land. One possible explanation is that, to retain authority, they were compelled to frame their claims in terms of ideologies acceptable to the colonial authorities and to their own people—except at the moment, however, this is only speculative. In 1930, the district heads (non-hereditary chiefs appointed by the Oba) were discovered to have been issuing farming permits to Sobou without referring to the Oba, and were reprimanded in his presence. Despite his nominal control, the powers of the Oba were limited. Ward-Price (1933) reported that he could not seize plots standing in the ground, could not revoke a grant of land unless it had been left vacant for an “unreasonably” long period, and, though in Benin city itself strangers were refused permission to settle unless they signed a form attesting to their intent to

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696 Rowling (1948), p. 3
697 WALC, Correspondence, p. 168
698 Ward-Price (1933), p. 113.
699 Ward-Price (1933), p. 114
700 Ward-Price (1933), p. 114
701 WALC, Minutes, p. 145
702 Rowling (1948), p. 4
703 Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
settle permanently, once this permission was received the Oba could not prevent them from selling land to Bini.\textsuperscript{704}

In the Ekpoma village group, the subordinate “Igule” villages were founded by men often acting independent of the Oba of Benin, while some were established by colonists directly supervised by him or by the Enogie of Egwerre, the central village.\textsuperscript{705} In 1931, there were sixteen of these. Their origins were often disputed – was Ogban, the founder of Ugioren, a grandson of the Oba who had been given land for settlement, or was he a man who had rebelled against the Enogie?\textsuperscript{706} Emando, founded by Hausa or Yoruba soldiers on a marauding expedition, had been given land by the Enogie, who used them as mercenaries.\textsuperscript{707} At the same time, this group also paid their allegiances to Bida.\textsuperscript{708} Even still, Butcher (1932) wrote that the regulating authority was legal, not personal – “The time for making farms, the site of these farms, the payment of yearly services, if any, were all regulated by custom, and the duty of Odion was not so much that of positive ruler, but that of upholder and interpreter of custom.”\textsuperscript{709} Similarly, Mayne wrote of the Oru clan of Owerri Province that “the laws of immemorial usage virtually governed consular decisions in the past.”\textsuperscript{710} Haig claimed that the Abo Clan of Ogoja province had no executive traditionally – custom dictated all.\textsuperscript{711} Denton noted that a clan’s land in Asaba division of Benin was divided into four zones, with clan authority diminishing with physical distance.\textsuperscript{712} Far from the clan center, no permission was needed for members to farm, while strangers could readily obtain permission. Village communal land, still remote from the clan center, was obtained from the clan head on the advice of the village elders, with the head’s capacity to veto an allocation by the village elders ambiguous.\textsuperscript{713} Quarter land, which was less remote, was governed along the same principles. Finally, family and compound land was controlled directly by the compound head.\textsuperscript{714} The opposite was true of Kukuruku Division. In reply to queries by the District Officer in 1929, it was found that pawning existed only of family land closest to the towns, while rural

\textsuperscript{704}\textsuperscript{704} Ward-Price (1933), p. 115-118  
\textsuperscript{705}\textsuperscript{705} Butcher, “Intelligence Report on the Ekpoma Village Group, Ishan Division, Benin Province,” (1932), p. 4  
\textsuperscript{706}\textsuperscript{706} Butcher, “Intelligence Report on the Ekpoma Village Group, Ishan Division, Benin Province,” (1932), p. 15  
\textsuperscript{707}\textsuperscript{707} Butcher, “Intelligence Report on the Ekpoma Village Group, Ishan Division, Benin Province,” (1932), p. 18  
\textsuperscript{708}\textsuperscript{708} Butcher, “Intelligence Report on the Ekpoma Village Group, Ishan Division, Benin Province,” (1932), p. 18  
\textsuperscript{709}\textsuperscript{709} Butcher, “Intelligence Report on the Ekpoma Village Group, Ishan Division, Benin Province,” (1932), p. 26  
\textsuperscript{710}\textsuperscript{710} Mayne, “Intelligence Report on the Oru Clan”  
\textsuperscript{711}\textsuperscript{711} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 11  
\textsuperscript{712}\textsuperscript{712} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{713}\textsuperscript{713} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\textsuperscript{714}\textsuperscript{714} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
land was generally communal and allocated by the village council every five or six years.\textsuperscript{715} In
the Benin district, the general habit of farming in a certain direction facilitated both claims to
fallow land and to the land ahead of the present year’s plot.\textsuperscript{716} During the colonial period, these
could be enforced by court injunction. In Agbor district of the same province, no claims to land
not under permanent crops could be retained by working it, however.\textsuperscript{717}

The extension of the the Bini empire prior to the nineteenth century and the weak
remnants of its influence that remained into the twentieth left some unusual patterns of tenure in
its wake. The case of Lagos is discussed below. The Warigi Warifi paid tribute both to the Jekris
and to the Oba of Benin in return for occupation of vacant land, but claimed that this was in
return for protection from slave-raiders rather than a recognition of rights of ownership.\textsuperscript{718}

Butcher provides some interesting examples form the Ika-Ibo, situated between the Benin, Ishan
and Asaba Divisions of Benin Province.\textsuperscript{719} While “ethnologically” Igbo, a long history of contact
meant that customs varied across obodo (towns) according to the level of Bini influence.\textsuperscript{720} The
area had been settled by Igbo migrants during the sixteenth or seventeenth century. In 1778,
Agbor revolted against the Oba Ahengbuda, but was subdued.\textsuperscript{721} After the assumption of British
control in 1906, the Ika chiefs refused to recognize the Oba except for rare ceremonial
purposes.\textsuperscript{722} After the massacre of Lt Phillips’ party in 1896, the British launched a punitive
expedition in 1897 that overthrew the Oba. In contrast to the territories acquired by treaty,
British land policy here was guided by the belief that, by right of conquest, all land in Benin had
become Crown land.\textsuperscript{723} No legislation gave this presumption the force of law.\textsuperscript{724} The
Government leased its lands for stations at Warri and Saperle by lease, and acted as landlord to a
number of trading firms through sublet.\textsuperscript{725} In 1908, Moor “tacitly acknowledged” Bini ownership
of land by allowing the native authorities to accept the royalties from timber and rubber

\textsuperscript{715} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{716} Rowling (1948), p. 5
\textsuperscript{717} Rowling (1948), p. 25
\textsuperscript{718} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{719} Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 6
\textsuperscript{720} Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 8
\textsuperscript{721} Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 10
\textsuperscript{722} Butcher, “The Ika-Ibo People of the Benin Province Southern Nigeria,” (1931), p. 10
\textsuperscript{723} Jeffreys (1936), p. 11
\textsuperscript{724} WALC, Draft Report, p. 62
\textsuperscript{725} WALC, Draft Report, p. 62
licenses.⁷²⁶ F.S. James, the acting governor in 1912, found the situation bewildering; “now I am told we must proclaim the lands,” he complained. “It is a curious thing to me that we should go and fight, and do all sorts of things, and be told that we have no power over the people, or the land, or anything else.”⁷²⁷ Restoration of the Oba was, in 1916, conditional on his recognition of Government control of land. This policy was short-lived, however, and in 1917 he was the administration of land was left to the Oba, though rental income had to be shared with the Government and Native treasuries.⁷²⁸ The Sobo had been informed after the Benin expedition that they were no longer subjects of the Bini kingdom, and had become owners of their own lands.⁷²⁹ However, in 1935, the Jesse clan of Sobo were found by the court to be still under the Oba’s authority; to secede and join the rest of the Sobo, there were required to pay an annual fifty pound rent.²³⁰

A brief political history of the Jekri of Warri is laid out in Chief Omagbeni v. Chief Dore Numa (1924).⁷³¹ Until some time between 1820 and 1860, the political authority of the Jekris was the Olu dynasty, the last of whom was Akengbuwa. Usually, the son of the Olu would succeed him, but this was not an absolute right. At the time of his death the Jekri people did not want one of his sons to succeed. Soon after his death, his two sons also died, and the royal family fled. Iyi of Imaye, a house which had become powerful through accumulation of wealth and slaves, assumed control of Jekri government, and no descendants of Akengbuwa were invited to take part. He was succeeded by Chanomi, who took for himself the title of “Governor,” which had been used by European traders. He assumed many of the powers of the former Olu, and collected both dashes and distributed lands as he saw fit. His successor, Nana, was deposed by the British and was replaced by Dore, who was acclaimed by the chiefs and appointed by Sir Ralph Moore as chief of all the Jekris (Moore would not permit him to retain the title of “Governor.”) In the case in question, the plaintiffs claimed ownership of the land as descendants of Akengbuwa. Dore told the court that, were an Olu to in fact be appointed he would surrender his authority over the land at once, as he was only a trustee for the Olus and Jekris together. The plaintiffs claim was dismissed, in a decision that was upheld by Justice Tew on appeal in the Full Court.⁷³¹

⁷²⁶ WALC, Correspondence, p. 162
⁷²⁷ WALC, Minutes, p. 231
⁷²⁸ Jeffreys (1936), p. 11
⁷²⁹ Jeffreys (1936), p. 11
⁷³⁰ Jeffreys (1936), p. 12
⁷³¹ Chief Omagbeni v. Chief Dore Numa (1924), 5 N.L.R. 17
The Agbassa people (a Sobo group) came from Agbasu Otun to Jekri territory c. 1830, and were given permission by the Oly to settle in return for tribute and service. In Ometa v. Numa (1931)\(^{732}\), Ometa, on behalf of the Agbassas, claimed overlordship of the greater part of Warri territory. Justice Webber believed the claim had been brought because the Agbassa, who had grown in strength and numbers felt sufficiently powerful enough to impugn the Jekris’ title. Political power among Jekris thus coincided with administrative authority over land; control of the latter was transferred as the nature of the state was transformed during the period, and later bids for political independence were framed as contestations over the overlordship of land.

When Jaja came to Opobo from Bonny c. 1875, he did so with a considerable following, finding there were already some fifteen Andoni villages in place.\(^{733}\) At the time of the Bonny war, they considered the land on which the Okrikas and Oginis lived as their boundaries and the territory between the Andoni and Opobo rivers as their own. They had demonstrated their ownership by granting land to the Okrikas at Nkoro, and similarly granted land to Jaja and his followers all the land they wanted. As fishermen, control over creeks was far more important to the Andoni than land, and they welcomed strangers so long as they pledged not to wage war with them or interfere with their own occupation. They had in fact failed to occupy some islands in order to preserve a buffer between themselves and their neighbors. No tribute was demanded of Jaja’s people, who were allowed to place Europeans on the land without any objections being lodged. Jaja and his followers also obtained land at Ota Ebau from the Kwas, who also did not demand rent or tribute at first. When, however, brick-making emerged as an industry and Jaja’s people began collecting rents, the Kwas stepped in and demanded they receive a share of the payments. In a 1926 case,\(^{734}\) Justice Weber felt that both the Andoni and Kwas were entitled to declarations of title, but because of the long occupation of Jaja and his followers, refused to grant an injunction that would interfere with their enjoyment of the land.

Not all political authority in pre-colonial Nigeria was vested in the state; much was contained within structures of kinship and lineage, the characteristics of which could change the impact of nineteenth-century developments on systems of land tenure. One important feature is whether descent within the lineage is agnatic, uterine, or cognatic. Schwab (1955) identifies two

\(^{732}\) Quoted in Oshodi v. Dakolo & ors. (1930), 9 N.L.R. 13

\(^{733}\) Chief Eferekuma Aro & ors. v. Chief Mark Pepple Jaja (1926), 6 N.L.R. 24

\(^{734}\) Chief Eferekuma Aro & ors. v. Chief Mark Pepple Jaja (1926), 6 N.L.R. 24
inherent sources of fissure in agnatic lineages, specifically within Yoruba idile in Oshogbo.\textsuperscript{735} The first is that every male in an idile can, in theory, found his own lineage segment or isoko.\textsuperscript{736} Second, within any idile, men may be distinguished by their origun, the maternal lineage emanating from an apical progenitrix.\textsuperscript{737} Access to land in Oshogbo is through membership in an isoko of three generations, though the idile as a whole retains the right to dispose of land outside the isoko, as well as rights to reap fruit-bearing trees.\textsuperscript{738} In this way, the rights of any one segment are circumscribed by other segments. Though in Schwab’s (1955) study, neither individualization nor sale\textsuperscript{739} was present, he found it “noteworthy that among the changes brought about by Western influences has been a strong tendency for increasingly small units within the idile to assert rights previously held by wider groups. The focus of the smaller groups was very often the matri-segment rather than the partri-segment, an emphasis indicative of the increasing influence of full descent over the unity of the patrilineal group.”\textsuperscript{740} In Umor, individuals who were profiting from trade under British rule had adopted the view that a man’s wealth was “no concern” of his matrilineage, and were attempting to evade the matrilineal rules of inheritance of movables.\textsuperscript{741}

Whereas the northern Yoruba – e.g. Ekiti and Oyo excluding Ibadan – are mostly patrilineal, descent in Ijebu and Ondo is cognatic. The implications of this fact have been explored in depth by P.C. Lloyd. In both areas, the concept of “family land” (ile ebi) is similar – rights derive from membership in a descent group by birth, and encompass general use, undisturbed occupation, and participation in management.\textsuperscript{742} Marriage being virilocal, the children who help their fathers on the land generally inherit it.\textsuperscript{743} In agnatic groups, land is held corporately by the descent group, and a man validates his rights by claiming descent from the apical ancestor; his place of residence does not matter.\textsuperscript{744} It is possible, however, to obtain land from one’s mother’s descent group – this enabled members of forest-poor patrilineages to

\textsuperscript{735} Fieldwork was conducted 1949-1951.
\textsuperscript{736} Schwab (1955), p. 353
\textsuperscript{737} Schwab (1955), p. 353
\textsuperscript{738} Schwab (1955), p. 364
\textsuperscript{739} “The sale of farm-land which is held corporately by the lineage is forbidden.” p. 372, footnote.
\textsuperscript{740} Schwab (1955), p. 368
\textsuperscript{741} Forde (1939), p. 153
\textsuperscript{742} Lloyd (1966), p. 487
\textsuperscript{743} Lloyd (1966), p. 488
\textsuperscript{744} Lloyd (1966), p. 490
become cocoa planters. Lloyd (1959) argues that, in the north, women lived in their husband’s houses and did not cultivate land. At the time he wrote, however, women were building houses and planting cocoa on family land, and passing these plots to their children. The choice to participate in a cognatic group is circumscribed by a number of factors, notably the associations of a man’s parents and residence of his father. The Ijebu are generally active in two groups, the Ondo in only one. The land-holding unit in this case might be either a descent group with an apical ancestor or a territorial unit in which the apical ancestor is associated only with a single house. In the former case, typical of Ijebu, members of the descent group are collectively interested in an individual’s actions concerning land. In the latter, predominant in Ondo, the land apportioned to an individual by the Quarter head is usually too small to accommodate his heirs corporately, and so the lineage segments with each generation. Notably, Lloyd (1966) argues that land conflict is mitigated by cognatic descent, because individuals can seek land from other groups rather than attempting to steal it. In agnatic groups, conflicts between individuals often become inter-group conflicts. In the latter, rather than claiming land belongs to his descent group, and individual will claim membership of the group to which the land belongs. This limits the formation of large villages, because the threat of land expropriation by a large group is less, permitting the establishment of smaller subordinate towns.

[Lloyd has explored this further in some other papers and his book Yoruba Land Law. I will have to incorporate this information into the above paragraph later]

The Afikpo Igbo also practice cognatic descent, and present a case in which cognatic descent, rather than reducing conflict over land, instead intensified it. The Afikpo state that whether land became matrilineal or patrilineal depended on the wishes of the first person to clear the virgin forest. Ottenberg (1968) argued that it is more likely that they were initially matrilineal, and that Igbo who settled in the area brought patrilineal descent with them. During

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745 Lloyd (1966), p. 491
746 Lloyd (1966), p. 494
747 Lloyd (1966), p. 495
748 Lloyd (1966), p. 492
749 Lloyd (1966), p. 493
750 Lloyd (1966), p. 496
751 Lloyd (1966), p. 498
752 Lloyd (1966), p. 499
his fieldwork in the 1950s, he found that only 15% of Afikpo land was controlled by patrilineages. Patrilineage land was available to all males who were initiated into the secret society, and is allocated annually by elders according to relationship, seniority, and willingness to use the land. Because the Afikpo were virilocal, matrilineages often had scattered landholdings which could easily be seized when the individuals who had knowledge of them died. Though one job of the matriclan was to prevent this, Ottenberg (1968) found theft to be "endemic." An individual involved in a dispute who wanted to "punish" his matrilineage might pledge land to a patrilineage. Land was not usually pledged between matrilineages; within the matriclan this would cause conflict, and different matriclans were seen as competing over land. Though in theory redeemed land was controlled by the entire matrilineage, an individual could attempt to acquire land in secret by redeeming it himself; this would become his personal property, though it would pass to his uterine descendents at death.

4e. Colonial Rule

Lagos was annexed in 1861, and in 1874 it was brought under the same administration as the Gold Coast Colony. In 1877 the Lagos Protectorate was declared. In 1879, English merchant firms on the coast were combined together to form the National African Company, which was chartered in 1886 as the Royal Niger Company (RNC), with administrative rights over large sections of the interior.753 The treaties signed by Consul Hewitt formed the basis of the proclamation of the Oil Rivers Protectorate, which was proclaimed in 1885 and extended in 1893 as the Niger Coast Protectorate. During the trade depression of the 1880s, European merchants competed bitterly with each other and with African merchants in the attempt to pass on their losses to others.754 This crisis tipped the balance of merchant opinion in favor of protection from the British government, and they began to press for a more active policy through institutions such as the Lagos Chamber of Commerce and the African Trade Section of the London Chamber of Commerce.755 Further, French annexation of Porto Novo in 1883 and Viard’s expedition to Abeokuta in 1887 threatened to divert Yoruba trade away from Lagos.756 Denton’s subsequent

753 WALC, Draft Report, p. 16
754 Hopkins (1968), p. 593
755 Hopkins (1968), p. 597
756 Hopkins (1968), p. 600
visits to Ilaro and Ijebu Ode were perceived as challenges by the Egba and Ijebu authorities, and the two states presented a “united front” against the British, in order to preserve slavery, tribute, and internal tolls. The Colonial Office was “overwhelmed by protests from the chambers of commerce,” which were finally placated in 1892 by an expedition against Ijebu Ode.

Emboldened by victory, governor Carter embarked on the then largest ever official tour of the hinterland, making treaties with Ilorin, Oyo, and Ibadan. Though colonial rule in Lagos began in 1861, the 1890s were the period during which the British truly expanded into the rest of Yorubaland, making treaties with Ibadan, Oyo, Ilesha and Abeokuta. These treaties allowed for “a large measure of local autonomy, which was later to cause the Government considerable trouble.” Morel (1911) later lamented the British policy of “non-interference” in Yoruba areas in which the Government refused to deal with land tenure in the interior of Yorubaland. The Egba chose “discretion before valor,” and were rewarded for their compliance with a treaty recognizing the independence of Abeokuta on the condition that the trade routes were not closed. These were not arrogated until soon after unification in 1914, when Lugard used disturbances among the Egba as a “chance to terminate the existing anomalous state of affairs.” This section discusses the effect of the early colonial period on the emergence of private property in land. It begins by considering the broad outlines of colonial policy and its effects, before describing in greater detail the impacts of the court system and the particular case of Lagos.

British land policy evolved in fits and starts, some of which are mentioned above. In 1911, Justice Buchanan-Smith wrote that “until recent years the Colonial Government cannot be said to have evolved any very definite land policy applicable to Southern Nigeria generally.” The first attempt to regulate land in the Western Provinces occurred in 1896, when the Government issued a gazette notice that it would refuse to recognize documents transferring land to Europeans that were not signed by the Governor or a deputy. The territories under

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757 Hopkins (1968), p. 601
758 Hopkins (1968), p. 601-602
759 Hopkins (1968), p. 603
760 McPhee (1926), p. 164
761 McPhee (1926), p. 164
762 Morel (1911), p. 83
763 Hopkins (1968), p. 603
764 McPhee (1926), p. 168
765 WALK, Correspondence, p. 161
766 WALK, Minutes, p. 123
control of the Royal Niger Company were transferred to Crown control in 1899, and the 1906 Niger Lands Transfer Ordinance passed ownership of the land formerly acquired by the Royal Niger Company by treaty to the British Government, complete with all rights held by the company on January 1, 1900.\textsuperscript{767} A Forestry Ordinance, passed in 1901, allowed the government to set areas aside as Forest Reserves while empowering the Governor to restrict the harvest of timber in any such reserve.\textsuperscript{768} A 1902 version of this ordinance, intended to apply to Lagos and the Protectorate, required ratification by the Native Councils in the areas under treaty. Upon their refusal to do so, the “whole Ordinance became very much of a dead letter.”\textsuperscript{769} Rents from concessions for trading sites were to be distributed by chiefs to their communities, but District Commissioners had no authority to supervise this distribution, converting many chiefs into “de facto landlords.”\textsuperscript{770} In 1903, the Lands Acquisitions Ordinance forbade transfer of land to non-Nigerians without the written consent of the Governor.\textsuperscript{771} Another 1903 act, the Public Lands Ordinance, allowed the government to appropriate land for public purpose, specifying that no compensation was due for unoccupied land.\textsuperscript{772} This was strengthened in 1907 by the Land Registration Ordinance, which required that any such instrument be registered within sixty days.\textsuperscript{773} The Crown Lands Management Ordinance (1906), which applied only to the Central and Eastern Provinces, vested the management of Crown Lands in the governor, who was empowered to lease them.\textsuperscript{774} The Crown Lands Ordinance (1908) forbade leases of more than 1500 acres or those with terms of more than 99 years.\textsuperscript{775} The Mining Regulation and Mining Regulation (Oil) Ordinances further restricted the alienation of land to Europeans.\textsuperscript{776} The Native Lands Acquisition Ordinance (1908) required that aliens to obtain the governor’s consent to acquire any interest in land, though in 1911 those individuals and companies who had acquired interests prior to 1908 were permitted to apply for deeds.\textsuperscript{777} A “considerable number” of such

\textsuperscript{767} WALC, Draft Report, p. 17
\textsuperscript{768} McPhee (1926), p. 165
\textsuperscript{769} McPhee (1926), p. 165
\textsuperscript{770} McPhee (1926), p. 167
\textsuperscript{771} McPhee (1926), p. 165
\textsuperscript{772} WALC, Draft Report, p 137
\textsuperscript{773} WALC, Draft Report, p. 65
\textsuperscript{774} WALC, Draft Report, p. 62
\textsuperscript{775} WALC, Draft Report, p. 63
\textsuperscript{776} WALC, Draft Report, p 136
\textsuperscript{777} WALC, Minutes, p. 125
applications had been made by merchants within the first year.\textsuperscript{778} By 1913, the anomaly had arisen that, while within Lagos there existed complete freedom of alienation to Europeans (though most Europeans held land under leasehold), in the Protectorate any such transaction required the sanction of the executive.\textsuperscript{779} The wording of these ordinances is, however, only a partial guide to the actual exercise of colonial land policy. As the Conservator of Forests for the Gold Coast and Ashanti told the WALC, rules concerning forestry could only be enforced for the export trade – any other interpretation of the laws would be unfeasible.\textsuperscript{780}

One of the early controversial government policies related to land tenure involved the creation of Forest Reserves. Landowners in the Afir River and Okwangwo Reserves, for example, considered the process “tantamount to appropriation.”\textsuperscript{781} Regulation of forestry was more extensive in Southern Nigeria than elsewhere in British West Africa, and the Forestry Ordinance in place during 1912 was based on similar legislation enacted in Burma.\textsuperscript{782} Its main object was the establishment of Reserves for conservation, though it also allowed “native lands” to be brought under the control of the Forestry Department.\textsuperscript{783} A license to cut and export timber needed consent of the governor, and gave rights for a period of five years, with two year renewals. A license covering more than 100 square miles required the consent of the Secretary of State.\textsuperscript{784} Licenses to tap rubber were issued to individuals who could demonstrate competence in rubber tapping, and did not apply to any specific geographic area.\textsuperscript{785} The Ordinance was applied unevenly in the Western Provinces since, under treaty, the assent of the Native Councils was required.\textsuperscript{786} Around the Mamu forest, Meko, and Ilesha, the Forestry Ordinance was rejected,\textsuperscript{787} as it was in Ondo, Ijebu-Ode and Badagri as well.\textsuperscript{788} This rejection did not necessarily prohibit the pursuance of an active conservation policy. At Ibadan, the land for the Forest Reserve was given to the Government as a “Gift to the King.”\textsuperscript{789} In Abeokuta, the Alake and Council made

\textsuperscript{778} WALC, Minutes, p. 125 \\
\textsuperscript{779} Geary (1913), p. ???
\textsuperscript{780} WALC, Minutes, p. 477 \\
\textsuperscript{781} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 2 \\
\textsuperscript{782} WALC, Draft Report, p. 90 \\
\textsuperscript{783} WALC, Draft Report, p. 91 \\
\textsuperscript{784} WALC, Draft Report, p. 92 \\
\textsuperscript{785} WALC, Draft Report, p. 92 \\
\textsuperscript{786} WALC, Draft Report, p. 92 \\
\textsuperscript{787} WALC, Minutes, p. 236 \\
\textsuperscript{788} WALC, Minutes, p. 228 \\
\textsuperscript{789} WALC, Minutes, p. 393
their own forestry rules, and were supportive of the concept of reserves, which Secretary Edun likened to the traditional Igbo Airo.\footnote{WALC, Minutes, p. 450}

Colonial rule could both promote and inhibit private property rights in land. Before the advent of British rule, the Awujale had collected tribute from all Ijebu villages with the suffix “Ode,” an appellation denoting settlement by the son of an Awujale. This power had begun to wane by 1912.\footnote{WALC, Correspondence, p. 182} Rowling (1948) does not provide a chronology that allows the timing to be pinpointed, but the presence of Native Administration surveyors strengthened the claims of allotees of quarter land – now “armed” with plants of their grants – against those of Quarter Elders in Benin city.\footnote{Rowling (1948), p. 7} As early as 1929, it was claimed that Bini could lease to non-Bini. This was facilitated, however, by ideology, which could argue that the expense of demarcation, survey and clearing was what was being leased, and not the land itself, such that no breach of custom was committed.\footnote{Rowling (1948), p. 7} As Sumner describes it, the Oba and council accepted the right of individuals “to lease land, as distinct from houses, to foreigners. It is doubtful whether this is according to Native Law and Custom, but they persisted in their view after the due warning of its dangers.”\footnote{Sumner Papers, Rhodes’ House, Mss. S. 538 (8)} Prior to British arrival, the only non-Bini who could acquire rights to land were those who intended to settle permanently and accept the authority of the Oba.\footnote{Rowling (1948), p. 10} Under British occupation, however, temporary occupation emerged, initially by Sobu migrants who exploited palm trees in the province.\footnote{Rowling (1948), p. 10} This did not, however, incite the charges of agricultural rents correlated with areas cultivated – during the late 1940s fees were still per head for palm collection (with an additional fee per headman) and per plot for farming.\footnote{Rowling (1948), p. 10} In Benin City itself, several Yoruba “strangers” settled after the Benin expedition in 1897, and many purchased their rights from individual Bini rather than seeking them from the (deposed) Oba.\footnote{Rowling (1948), p. 11} Later attempts to “regularize their occupancy” in the form of leases were not well received, and only partly

\footnotesize{\begin{itemize}
  \item \footnote{WALC, Minutes, p. 450}
  \item \footnote{WALC, Correspondence, p. 182}
  \item Rowling (1948), p. 7
  \item Rowling (1948), p. 7
  \item Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
  \item Rowling (1948), p. 10
  \item Rowling (1948), p. 10
  \item Rowling (1948), p. 10
  \item Rowling (1948), p. 11
\end{itemize}}
successful. In Idaure, one witness stated that cash and produce rents were an innovation that had only arisen since the British had arrived.

Among the Ika in Benin division, Rowling described inter-clan and inter-village land disputes of the 1940s as a “recent phenomenon,” but noted that “tradition is invoked to support emphatic statements about clear-cut rights going as low as the ‘ogbe’ or even the ‘idumu.’” The Obi Agbor himself insisted that boundaries between quarters were a new phenomenon, brought about by taxation (which prompts villages to close sections of palm bush so as to create a reserve) and strangers, which produce rents over which Quarters compete. In the case of Asaba, it is possible that division of rights to sub-units within the “ogbe” (clan) existed prior to the colonial period, they were not emphasized. Under British rule, however, “intermitttable squabbles over land-rights” led to the idumu having almost autonomous control of land, with individual families making claims, and in the case of urban lots, even individual ownership being recognized. In spite of this, rights over some aspects of the land, such as the waterside or palm bush, remained vested in the quarter. In Kukuruku district of Benin province, a town meeting in 1929 decided that palm trees in the bush were to be communal.

Some of the authorities recognized under the British system of indirect rule used their new power to increase their control over land. The Treasurer of the Agege Planters’ Union told the WALC that a king who alienated his family land “must do so by force, relying on the hope that the English Government will punish those who question his authority.” The chiefs of Ibadan attempted to use their 1893 treaty with Denton to prevent the alienation of land, telling him that “we consider it also our greatest wealth bestowed upon us as by the Almighty, and we do not desire it to go out of our hands. If the Governor will see that our rights are not trespassed, we will not object to sign the agreement.” G.B. Williams believed that during the 1930s the Oshemowe and Council of Ondo were writing land laws to suit themselves. Similarly, the

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799 Rowling (1948), p. 11
800 WALC, Correspondence, p. 214
801 Rowling (1948), p. 23
802 Rowling (1948), p. 24
803 Rowling (1948), p. 33
804 Rowling (1948), p. 30-31
805 Rowling (1948), p. 32
806 Rowling (1948), p. 14
807 WALC, Correspondence, p. 236
808 John Holt Papers, Rhodes’ House, Mss Afr s. 1525, Box 23, p. 141
809 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
District Officer of Kukuruku Division noted in 1929 that rents on communal land were being paid to the village head personally, while some chiefs were advancing claims to ownership contrary to custom.\textsuperscript{810} At Ondo, the Oshemowes pocketed large sums from their control of forestry royalties, while at the same time collecting rents by claiming ultimate ownership of the land.\textsuperscript{811} The Oshemowane would distribute these rents among “his chiefs,” though it appears that only some received them.\textsuperscript{812} In a 1917 resolution, the Oshemowe and Chiefs of Ondo, in order to lay out the land law and prevent “invention by ill-disposed, person or persons some future date of claims to individual or collective rights over land,” declared that all land belonged to the Oshemowe who holds it for the benefit of all the people of Ondo.\textsuperscript{813} Individual, collective, nor town rights did not exist, and there were to be no boundaries between the towns.\textsuperscript{814} Any Ondo could farm anywhere within Ondo with the consent of the Oshemowe and the Bale of any town within four miles of a town, thought he Bale could not withhold consent without due cause.\textsuperscript{815} No man could claim rights from previous occupation or inheritance, either in the case of farm land or permanent crops.\textsuperscript{816} In a revealing example, the Olisa of Ijebu Ode purchased a plot of land for £21 from a vendor whose family was unable to protest, because he was politically powerful. They took the case before the Native Court, which sent the vendor to prison, and fined the middleman. There is no indication in this account, however, that the Olisa was punished.\textsuperscript{817}

In Ijebu-Ode, the District Commissioner told the WALC that, in the twenty years it had been occupied, the practice of buying and selling land had emerged. He and the chiefs together drafted a proclamation stating Ijebu land law and prohibiting sale.\textsuperscript{818} The proclamation itself declared that all land in Ijebu belonged to the Ijebu, allowed sale only if the consent of the majority of the communal owners was obtained, if the transfer was to other Ijebu, and – in the future – if three months notice were given to the Awujale and Council.\textsuperscript{819} Non-Ijebu could only hold the rights of user specified by the rightful owners.\textsuperscript{820} Interestingly, an Ijebu as defined in the

\textsuperscript{810} Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
\textsuperscript{811} Bridges, “Report on Ondo District” (1935), p. 2
\textsuperscript{812} Bridges, “Report on Ondo District” (1935), p. 30
\textsuperscript{813} Bridges, “Report on Ondo District” (1935), Appendix 8
\textsuperscript{814} Bridges, “Report on Ondo District” (1935), Appendix 8
\textsuperscript{815} Bridges, “Report on Ondo District” (1935), Appendix 8
\textsuperscript{816} Bridges, “Report on Ondo District” (1935), Appendix 8
\textsuperscript{817} WALC, Minutes, p. 151
\textsuperscript{818} WALC, Minutes, p. 150
\textsuperscript{819} WALC, Minutes, p. 154
\textsuperscript{820} WALC, Minutes, p. 154
proclamation was either someone who was Ijebu by birth or who “for some good reason (such as long residence in the Ijebu country)” could be permitted by the Awujale and council to become Ijebu.821 When the committee read the proclamation to Chief Dada Jagun, however, he stated that he “never knew any sale of that sort.”822 The Awujale’s messenger added that the proclamation was “only a nominal law, because there were no sales of land.”823 The fact of sale in Ijebu Ode did not mean, however, the existence of freehold, though some individuals had attempted to introduce it; the ultimate ownership of land remained vested in families.824 One exception, however, related to individual purchase; if a man bought land “elsewhere,” his family could not claim it.825 Younger Ijebu – those “who attained manhood under British occupation” – believed that the purchaser of a plot could sell it, even to non-Ijebu, without reference to any authority.826 Sapara-Williams’ view was that the Ijebu would sell only of “everything that could be pawned has been pawned, and the debt remains still unpaid.”827

Forde’s (1939) study of Umor, near the Cross River, provides an example of how colonial rule operated over time within a single community. A native court had been set up in 1899,828 and by 1935 (the time of Forde’s fieldwork), it was a “firmly established institution.”829 The palm oil and kernel trades in Umor were controlled by a few individuals who otherwise had little political prominence, and none of whom were members of the Yabot – the village council composed largely (but not exclusively) of are priests.830 The process of acquiring land, however, remained within the patrilineal clan network.831 Forde (1939) explained this as the result of land abundance; though eighteen square miles of land in the vicinity of Umor were “occupied” by farm plots, only four were used in every year, as land could still be fallowed for four or five years.832 There were, however, changes in the manner of dispute settlement and enforcement. Land cases were sometimes settled in the Wards by Warrant Chiefs, whereas previously they

821 WALC, Correspondence, p. 186
822 WALC, Minutes, p. 461
823 WALC, Minutes, p. 462
824 WALC, Correspondence, p. 181
825 WALC, Correspondence, p. 182
826 WALC, Correspondence, p. 185
827 WALC, Correspondence, p. 244
828 Forde (1939), p. 142
829 Forde (1939), p. 145
830 Forde (1939), p. 153
831 Forde (1939), p. 154
832 Forde (1939), p. 130
would have been brought before the Yabot.\textsuperscript{833} The coercive powers of the Ikpongkara secret society had “withered in the course of the administrative changes of the past thirty years.”\textsuperscript{834} Previously, its members had been empowered to seize the livestock of individuals (and their kinsmen) who did not comply with the settlement of a land dispute.\textsuperscript{835}

The British “Pax Britannica” facilitated migration and economic growth, which could permit new institutions to develop. The wars of the nineteenth century had certainly affected the control of land. At Idah, the existence of tribute originated as payment for peace from Nupe raids.\textsuperscript{836} The sole example of sale or pledge between Africans that Rowling (1948) could uncover for Kukuruku District was an instance during the Nupe wars in which a village of Ukpilla immigrants obtained land from Igarra in return for slaves.\textsuperscript{837} An additional complication arising from these wars was the emergence of “concurrent” rights held by different villages through Imeme immigration into Akoko. When villages fled the lowlands for the greater security afforded by the hills, they would return to find others farming in their place.\textsuperscript{838} The Oshemowe Arilekolasi of Ondo was compelled during the mid-1880s to “go to sleep,” i.e. to commit suicide. He told his chief slave to avenge him, which he did with the aid of an army of slaves and Ife warriors, who settled at Okeigbo and were afterwards joined by other Yoruba.\textsuperscript{839} The Ondo were led back to their kingdom by Oshemowe Jimekun in 1872, who was persuaded by a European.\textsuperscript{840} It was not necessarily the case, however, that to the victor went the spoils. The Oni of Ife, in 1912, declared that “Ife had been destroyed three times, some of the people captured and the rest driven into the bush – and the ruins which you see about the town have not been built upon because the family owners have not come to build upon them; and it was with farm lands. No one would dare to take possession of them in the absence of the owners.”\textsuperscript{841}

Basden (1966b) argues that Kola Tenancy, which did could not in the past be used by strangers from outside an Igbo community gain access to land, changed under British Rule to allow this. Subletting, once prohibited, became possible with consent of the landlord. British rule

\textsuperscript{833} Forde (1939), p. 148
\textsuperscript{834} Forde (1939), p. 140
\textsuperscript{835} Forde (1939), p. 141
\textsuperscript{836} WALC, Correspondence, p. 172
\textsuperscript{837} Rowling (1948), p. 14
\textsuperscript{838} Rowling (1948), p. 16
\textsuperscript{839} Bridges, “Report on Ondo District” (1935), p. 8
\textsuperscript{840} Bridges, “Report on Ondo District” (1935), p. 8
\textsuperscript{841} People’s Union (19192), p. v
could also increase strains on land by allowing higher rates of population growth. One district commissioner from Bende testified before the WALT that he had, since 1905, seen a large increase in population and a consequent fall in the length of fallow.\(^{842}\) For safety from Oyo raids, several villages had clustered together into Odogbolu, whereas formerly the Elesi testified that they had “had houses in the middle of our farms.”\(^{843}\) Haig described the early history of Ikom Boki in Ogoja Province as hilltop settlements of “mutually suspicious villages.” Eta Puma, one of the first gun-owners in the region, had led a war during the 1860s that scattered them. Under the Pax Britannica, these villages slowly came down one by one to farm. Kataban did not come down until 1917.\(^{844}\) Ogboro, a Sobo chief told the District Commissioner that under the British small villages became possible, because the fear of marauders had lessened.\(^{845}\)

Colonial hegemony was limited; despite colonialism’s transformative power, this is a point that cannot be omitted in studying its effects. Despite Government attempts to pay compensation for acquired lands to Africans below market value – and below what would be paid to Europeans – courts could (and did) grant remedy.\(^{846}\) Macaulay (1912) provides the example of a chief at Apapa who successfully claimed the value of his land was seven times the government offer.\(^{847}\) In Chief Ndoko v. Chief Ikoro and The Attorney General (1926)\(^{848}\) the Government, which had been attached to the case because it had acquired the land in dispute under the Public Lands Acquisition Ordinance, attempted to demur on the grounds that its title could not be questioned. The court did not grant this permission. Similarly, when the Crown found that it had been accidentally leasing land that was not Crown land at Onitsha to a commercial firm for more than twenty-five years, the court found in Chief Commissioner, Eastern Provinces v. Ononye & ors (1944)\(^{849}\) that regularization of the lease was not a public purpose that could justify acquisition under the Public Lands Acquisition Ordinance. There was a limit, however, to how far the powers of the Crown could be challenged in court. In Glover v. the Officer Administering the Government of Nigeria & ors (1949)\(^{850}\), the court found that the

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842 WALT, Minutes, p. 115
843 WALT, Correspondence, p. 183
844 Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 4
845 WALT, Correspondence, p. 177
846 Macaulay (1912), p. 18
847 Macaulay (1912), p. 18
848 Chief Ndoko v. Chief Ikoro and The Attorney General (1926), 7 N.L.R. 76
849 Chief Commissioner, Eastern Provinces v. Ononye & ors (1944), 17 N.L.R. 142
850 Glover v. the Officer Administering the Government of Nigeria & ors (1949), 19 N.L.R. 45
plaintiffs could not claim that the Epetero Lands Ordinance (1949) was void for having contradicted the Royal Instructions to the Governor; unlike Canada or Australia, there was no Nigerian constitution created by an Act of Parliament, and so an act not disallowed by His Majesty must be considered to have received His sanction. In 1912 the Government had purposefully failed to pay rents to the chiefs of Onitsha for the previous five years, in order to assert that their properties were in fact Crown Lands.\footnote{WALC, Minutes, p. 235} In 1926, chiefs of Abak, Uto Etim Ekpo and Ika simply refused to forest land to the district officer for experimental work.\footnote{Summer Papers, Rhodes’ House, Mss. S. 538 (8)} The Cultivated Oil Palm Ordinance, which was intended to encourage production of higher grades of oil was, by 1938, “practically a dead letter.”\footnote{Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)} Mayne (1947) wrote that, in Calabar, “individual landholders frequently constitute the greatest hindrance to the successful completion of any [development] scheme.”\footnote{Mayne, “Annual Report on Calabar Province” (1947), p. 13} 118 people signed on to settle the Bemenda-Calabar-Cross River palm-planting project, but the initiative could not acquire any land.\footnote{Mayne, “Annual Report on Calabar Province” (1947), p. 16} Even the most basic of tasks necessary to an active land policy were beyond the scope of the colonial authorities. The Resident at Ibadan wrote to the WALC that “I wish it were possible to have a cadastral survey of the whole of the alien quarter.”\footnote{WALC, Correspondence, p. 190}

   Alien courts in Southern Nigeria predate colonial rule. A merchant court of equity was established in 1854 at Bonny, and by 1870 others had been erected in Brass, Benin, Okrika, Opobo and Calabar.\footnote{Adewoye (1977), p. 33} The RNC established a number of courts of its own along the Niger river, with a Supreme Court at Asaba, the company headquarters.\footnote{Adewoye (1977), p. 38} By 1903, there were 41 British courts in Southern Nigeria.\footnote{Adewoye (1977), p. 45} As Adewoye (1977) notes:

   “To turn to the British-established courts was either a matter of practical wisdom, when to do so might tip the scale of justice in one’s favour, or simply a matter of compulsion when the British officers would not tolerate any other kind of open court but their own.”\footnote{Adewoye (1977), p. 45}

In 1874, a Supreme Court was established at Lagos which, in 1888, became the Supreme Court of the adjacent territories, including Ilera and Pokia. Although its authority was extended in 1909
to cover the rest of the Protectorate of Southern Nigeria, its jurisdiction was limited by a series of treaties limiting its rights throughout the Yoruba territories.\textsuperscript{861} In states such as Ilesha and Ondo, no judicial agreements existed before 1914, and the laws of the Colony were not applied.\textsuperscript{862} In Ibadan, Oyo, Ife, and Ijebu Ode, the Supreme Court had no jurisdiction if both parties were African.\textsuperscript{863} Its power was, however, greater at Ibadan and Ijebu Ode than in Egba.\textsuperscript{864}

The face of customary law under colonial rule was that of the Native Court. The Supreme Court Ordinance (1908) was “practically identical” to the corresponding act in the Gold Coast\textsuperscript{865}, empowered the Supreme Court to apply “native law or custom,” “particularly” in cases relating land tenure and real property, so long as to do so was not “repugnant to natural justice, equity, and good conscience” and did not contradict any ordinance, and so long as the parties to a particular contract did expressly or by implication agree to carry out their transaction under English law.\textsuperscript{866} The Southern Nigeria Lands Commissioner in 1912 claimed that this section “manifests the intention of the British government that land disputes between natives should be decided in accordance with native law and custom.”\textsuperscript{867} In the Central and Eastern Provinces, native courts held jurisdiction in land cases where the value of the land in dispute was less than £200.\textsuperscript{868} The capacity of the courts to enforce customary law gave the parties in legal proceedings the ability to negotiate and contest the meaning, form, and applicability of African law, adding an additional layer of conflict and ambiguity to the struggle over the control of land in Nigeria. In The Administrator-General v. Tunwase & ors. (1946)\textsuperscript{869}, the court heard evidence on the devolution of property within the Maliki school of Islam, though Justice Brooke in the end decided applying Ijebu law would be more appropriate. The defendant in the case of El-Mir v. Sarkis (1936)\textsuperscript{870}, a dispute within a family of expatriates living at Ibadan, argued that the law applicable to the case was “Syrian native law and custom.” He did not succeed.

\textsuperscript{861} WALC, Draft Report, p 18
\textsuperscript{862} WALC, Draft Report, p 127
\textsuperscript{863} WALC, Draft Report, p 134
\textsuperscript{864} WALC, Minutes, p. 518
\textsuperscript{865} WALC, Minutes, p. 250
\textsuperscript{866} Supreme Courts Ordinance, 1923, [The wording here is very similar to the 1908 ordinance, but I need to track down a copy of this], Quoted in Jeffreys (1933), p. 15
\textsuperscript{867} WALC, Minutes, p. 124
\textsuperscript{868} WALC, Minutes, p. 125
\textsuperscript{869} The Administrator-General v. Tunwase & ors. (1946), 18 N.L.R. 88
\textsuperscript{870} El-Mir v. Sarkis (1936), 13 N.L.R. 20
Lack of Supreme Court jurisdiction did not preclude the native courts from having a transformative effect on land tenure in the treaty areas of Southern Nigeria. In Chief Yekororogha v. Chief Barakpali (1929), Justice Webber found that, in reopening a 1923 case that came before the Native Council at Brass, the District Officer had acted ultra vires – “I confess my inability to understand the procedure adopted in the reviewing of this Native Court judgment,” he wrote. Similarly, Capt. Ross, the Resident at Oyo, provided a valuable account of his influence to the WALC. Though he had no locus standi, he told the committee that when he gave his opinion, “I insist on its being taken. The Alafin always takes by advice.” His powers went beyond mere persuasion, and he claimed that “I have known cases where I could not trust them to try the cases. Therefore I have practically given judgment in their name.” Cases could be appealed from the native court directly to the Alafin-in-Council. He was also aware that there existed smaller native councils that, though not recognized by the colonial authorities, allowed local headmen to settle cases without ever coming to the notice of the recognized authorities. It is precisely this plurality of legal systems that incorporated a new layer of contestability into Nigerian land tenure. Not only could rules be subject to ongoing reinterpretation, but the forums for adjudication themselves could be chosen to suit the needs of the parties in a dispute. The Akanran of Badagry argued in 1912 “now we chiefs examine the land in dispute and try and settle the matter. If the parties are not content, they may take the dispute to court.” This also poses a difficulty for the present study; because the decisions on which I am currently basing my conclusions are all appeals court records, they may not be representative; this is another reason I would like to look at lower-level records in the future.

The rule of law will produce secure property rights, however, only under a battery of conditions that are not necessarily met in practice. The situation to which the force of law is given must be the status quo. Those with rights must be able to pursue remedy in court if they are infringed upon. Courts must be able to resolve disputes, and for this their decisions must be both final and enforceable. What a judicial decision accomplishes, however, is very different. It establishes a precedent that guides individuals in framing their claims, either by analogy to the precedent or by distinction, depending on what suits their interests more. Both legislation and

871 WALC, Minutes, p. 420
872 WALC, Minutes, p. 423
873 WALC, Minutes, p. 423
874 WALC, Correspondence, p. 209
precedent are open to ongoing reinterpretation, and each time a new point is recognized, more claims become admissible under it while others are excluded. Adewoye (1977) argues that the colonial court system was “ambivalent” towards economic development, and provides a list of cases which he divides into “progressive” and “conservative” decisions. What is revealed here is not only an uncertainty about the economic philosophy of the courts, but a deeper uncertainty about the willingness of courts to uphold custom, and the form of custom that would be enforced if the court did in fact grant recognition.

In some cases, political authorities and ‘landowners’ used the courts to strengthen their rights against those of their ‘tenants’. In Oshogbo, a Native Court in 1938 upheld the right of a landlord to evict a tenant with three generations of occupation of land for nonpayment of tribute. The Archibon of Esuk Ekpo Eyo won through litigation the right to collect rents from the Akim Quas. In the case of Obadiah Johnson v. Maraimo, the Otun Bale of Ibadan testified that land was granted only for specific purposes, and was revocable if put to any other use. In Chief Eletu Obido v. Seidu Salako & Ogusan (1882), the court found for a case at Lagos that obtaining a certificate from a surveyor without the consent of the Idej landlord constituted “buburu” – crime warranting eviction. Because it was the minor tenant’s guardian who had gone to the surveyor in the case, the court did not evict him; rather, the guardian was forced to surrender the certificate to the court, and pledge not to alienate the land during his ward’s minority. The Bale of Amowoo in Egba used the courts to eject a tenant who in 1878 had let his payment of tribute fall into arrears, and had begun to cut down palm trees. Bassey v. Bassey (1909) established that a gift of land at Calabar did not permit the tenant to sell or lease to strangers without the consent of chiefs, a decision that was reinforced in Henshaw v. Offiong (1910). In Bassey v. Cobham, Cobham and Kouri (1924), Justice Webber used the existence of these precedents to reject the views put forwards by the assessors. The Divisional Court in Kugbuyi v. Odunjo (1926) found that Awori custom prohibited a stranger tenant from reaping

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875 Adewoye (1977), p. 270-273  
876 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
877 Tour in the Akpabuyo Native Court Area (1924) p. 144  
878 WALC, Minutes, p. 518  
879 WALC, Minutes, p. 524  
880 WALC, Minutes, p. 526  
881 Bassey v. Cobham, Cobham and Kouri (1924), 5 N.L.R. 90  
882 Bassey v. Cobham, Cobham and Kouri (1924), 5 N.L.R. 90  
883 Kugbuyi v. Odunjo (1926), 7 N.L.R. 51
palm fruits. In Epelle v. Ojo (1926), a tenant fought eviction for having alienated his plot by invoking the decision in Awo v. Gam (1913), but the court found there was no acquiescence by his landlord, who had not launched any disputes over the tenant’s twenty years of occupation simply because he had not previously violated customary law.

Courts could also create insecurity for political authorities and landowners. In 1941, Justice Martindale wrote that “liability to forfeiture had been very much modified by the British Courts by way of equity by always granting relief against forfeiture.” Alexander argued that the spread of mortgage occurred because the typical chief “does not know how far he can enforce his own laws upon his subjects owing to the anomalous position of the courts.” The chiefs of Ibadan complained that cases were being taken out of their hands, and that the confusing mix of direct and indirect rule exercised had left their jurisdiction unclear. The Alafin of Oyo claimed that because of British influence, he cold no longer confiscate the property of a man who “speaks unbecomingly of the King.” In 1911, when Major Swanston conducted an inquiry in the Sobo areas of Sapele district, he noted that the evidence of Chief Ogodo differed from that of the other respondents. He had recently brought an action against the other Sapele chiefs, claiming that all Sapele land was his own private property. The Akarigbo of Ijebu-Ramo stated in a 1912 meeting that sales of land had emerged since the advent of colonial rule; he had been “powerless to prevent them since we have been under British protection.” The District Commissioner pointed out that in trying cases it was commonly asserted that pawning of land predated British rule, to which the Losi replied “they told you lies!” At Badagri, though no family member could alienate land without consent of the family head, the District Commissioner noted that some individuals had arrogated this right to themselves under British rule. In 1912, the Awujale approved a letter to the WACL stating that, in the past year, a judgment had been given against him in the native court for “an illegal land transaction.” The Oluwo of Iwo told the WACL that the only change in custom that had resulted from colonial rule was that people could

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884 Etim & ors v. Eke & ors. (1941), 16 N.L.R. 43
885 WALC, Minutes, p. 131
886 WALC, Minutes, p. 304
887 WALC, Minutes, p. 527
888 WALC, Correspondence, p. 170
889 WALC, Correspondence, p. 173
890 WALC, Correspondence, p. 173
891 WALC, Correspondence, p. 174
892 WALC, Correspondence, p. 184
now take land by lying in court, without consulting the chiefs.\(^{893}\) In Baille & ors v. Offiong & ors (1923)\(^{894}\), the court found that a tenant did not need to ask for permission to rebuild a house that had fallen down due to abandonment if the land had been given for any use and not solely occupation. In Ogumu & Ogegede & ors v. The Attorney General and Chief Dore Numa (1925), the plaintiffs complained that Dore had leased lands at Warri to the government in 1908 and 1911 without their consent. When the case was called, they discontinued the action with the right to re-open it. The Attorney General protested and pressed for judgment on the grounds that this was only one of many similar cases that had been opened and discontinued with the intent of keeping Dore’s title in doubt. Maxwell, the District Commissioner at Warri, did not give judgment, but instead assessed 80 guineas costs to each defendant. Justice Carey in Owume v. Inyang (1931) held that attempting to convert tenancy into freehold by claiming outright purchase was not a sufficient denial of title to warrant eviction.\(^{895}\) Though in Okitipupa (Ondo Province), the Ikale had leased many of their wild palms to Sobo migrants (though they had kept the shortest for themselves and thinned others out), the fact that rent cases had to be prosecuted by chiefs created and “inertia” enabling the Sobos to cease paying rent and claim the trees as their own.\(^{896}\) Bridges observed that they did “not appear to have the energy to press their claims in the civil court.”\(^{897}\)

Some cases gave more ambiguous results. The courts presumed when a lease was enacted that both parties knew the relevant English law.\(^{898}\) In Eyamba v. Holmes & Moore (1924)\(^{899}\), Justice Berkeley at Calabar considered land that had been given forty years before to Okon Holmes. The plaintiffs sought to recover the land because his daughter had failed to pay rent and had sublet the land, also claiming that the chief of the family or House had the right to remove a tenant at any time. Though he rejected their arguments, Berkeley also declared that “time has come for her to recognize the Evamba ground title by the payment of rent,” ordering a yearly payment of £1. In Uwani v. Akom & Ors (1928)\(^{900}\), the Chief Uwani sought to evict 400 Aros whose community had been occupying the land since the 1870s on the grounds that one Aro had

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\(^{893}\) WALC, Correspondence, p. 203  
\(^{894}\) Baille & ors v. Offiong & ors (1923), 5 N.L.R 28  
\(^{895}\) Owume v. Iyang (1931), 10 N.L.R. 111  
\(^{896}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\(^{897}\) Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)  
\(^{898}\) Jeffreys (1936), p. 14  
\(^{899}\) Eyamba v. Holmes & Moore (1924), 5 N.L.R 83  
\(^{900}\) Uwani v. Akom & ors. (1928), 8 N.L.R. 19
mortgaged his land to another. The court found that it would have been inequitable to evict the whole community (even though it would have been within Uwani’s powers to do so under customary law), in part because the Aros’ planted cocoa trees and other activities yielded an income of more than £1000 annually. Chief Justice Combe also noted, however, that the much smaller landlord community was deeply suspicious that the Aros would claim ownership of the land, and thus ordered an annual tribute of £15.

By providing an institutional venue for land conflict, particularly one in which cases could be appealed, pursued through other venues, and reopened whenever a new official unfamiliar with its previous history was appoints, the colonial courts created an environment in which the perpetuation and regularization of litigation was an attractive strategy in itself. When Ormsby-Gore toured Southern Nigeria in 1926, he wrote that it was widely believed that local barristers employed ‘touts’ – individuals who would “wander through the native communities endeavoring to discover the existence of disputes which may for the ground for legal proceedings.” Adewoye (1977) notes that colonial officials readily believed such touts were the source of all litigation, and were unable to see the contribution of increased land values that accompanied the spread of rubber and cocoa. One case was brought to his attention in which a man had spent £700 defending a plot of his own against an outsider who had been goaded on by his lawyer. An excellent example of the expense of time and money that could be sunk into pursuing a land dispute through the colonial courts is given in Idiok v. Nquat (1926). In 1915, a Native Court awarded certain lands to the plaintiff, but since the defendant disregarded the decision, a second action was brought in the Provincial Court in 1921. At this time, there was a new defendant, who thus argued that his claim was not admitted. The Provincial Court held that the Native Court had not yet been properly warranted, and so awarded the land to the defendant. The plaintiff appealed in 1922, and the judge remitted the case back to the Provincial Court, which re-heard the case in 1923. The Provincial Court then dismissed the case, because the plaintiff did not claim title, but left him the option of launching a new action for trespass. He did so, and in 1924 the Provincial Court decided that he must prove his title first, and that its 1921 decision had rejected his claim to title. He appealed this decision, and it was found that the case

901 Quoted in Jeffreys (1933), p. 28
902 Adewoye (1977), p. 144
903 Jeffreys (1933), p. 28
904 Idiok v. Nquat (1926), 6 N.L.R. 129
had not been not re-heard in accordance with the order that had been granted with the appeals court’s order. In 1926, Justice Weber noted that the District Officer had failed to properly explain the state of the case to the illiterate plaintiff.

Sumner in 1926 described the land dispute between Ikot Oyo and Ikot Inyand Ese as “long standing,” and regretted that the conclusion of a land case “rarely means the end of the litigation as the loser almost invariably appeals to the supreme court.”905 The percentage of applications to the district officer for review from the native courts ranged from 1 to 4 percent.906 What is interesting, though, is that this was far more true of disputes between communities than between individuals; cases of pawnning and inheritance rarely left the Native Courts.907 Similarly, describing the Ibadan Native Court in 1938, he argued that “it too often happens that a scrutiny of the cause lists, recently reintroduced, has revealed many cases resting unheard for no apparent or explicable reason… it also seems impossible for the native courts to enforce their judgments.”908 The District Commissioner for Bende found in 1912 that most difficulties were between tribes and sub-tribes; the typical procedure in the Native Courts was that the witness would “lie against each other, and the case is given to whoever has lied less.”909 Similarly, a C.M.S. missionary at Oshogbo told the committee that with each new District Commissioner, boundary disputes were re-opened.910 In 1938 Bridges reported that the dispute between Oshogbo and Ede over palm trees had persisted for several years and was continuing.911 In the Oguta area of Owerri, approximately 60% of cases that were appealed confirmed the decision of the lower court in 1920.912 Ross testified to the WALC that the only conflict he observed as Resident of Oyo was over cocoa, palm trees and rubber. For these crops, tenure was uncertain, and this insecurity “all comes back really to the question of the courts.”913 Often, if a man grew prosperous by planting cocoa, others – especially his social superiors – would attempt to establish claims against him in the courts.914

905 Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
906 Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
907 McPhee (1926), p. 170. It is clear from the Lagosian records – a jurisdiction without a native court – that Lagos was an exception in this regard.
908 Sumner Papers, Rhodes’ House, Mss. S. 538 (8)
909 WALC, Minutes, p. 116
910 WALC, Minutes, p. 303
911 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
913 WALC, Minutes, p. 426
914 WALC, Minutes, p. 425
N.C. Duncan wrote to the WALC that in Abakaliki, it had become common for Opobo traders to seek freehold title by paying an Obibio boy to farm his plot of land for him, and then refuse to pay palm wine as tribute and challenge the ownership of the land in court.\textsuperscript{915} In the Akpabuyo District of Calabar Province, the descendents of Iwang Akpo had been tenants of the descendants of Nyok Efion Nsung for seven generations before they denied the title of their overlords. In Nsung v. Antigha (1915), the court declared that they had thereby forfeited the land, but this was commuted to a fine by the Full Court on appeal. This became the first of many cases, which were summarized by Justice Martindale in his decision in Etim & ors v. Eke & ors. (1941)\textsuperscript{916}, in which he noted that many of the subsequent Native Court decisions contradicted each other – “much litigation,” he wrote “ensued by way of interpretation of the above judgments.” For Owerri, Brooks (1920) wrote that land cases were “of annual occurrence.”\textsuperscript{917} These disputes were seasonal, and though they could cause “a certain amount of excitement at the time,” they would settle down once the yams had been planted.\textsuperscript{918} In the District Officer’s court, 5 of 45 cases for that year were specifically listed as “land” cases, while in the Resident’s Court, the comparable figure was 7 of 14.\textsuperscript{919} Ottenberg (1968) similarly noted that, among the Afikpo during the 1950s, elders spend a substantial amount of time between September and February judging cases, though they had no means of enforcing their decisions. One dispute at Calabar had been kept alive for 28 years in part because of the uncertainty surrounding what had been meant in a 1915 judgement that referred to “compounds existing today, etc…, etc…”\textsuperscript{920} The Resident of Warri Province wrote in 1925 that “justice is the last thing sought by those who initiate the proceedings, and when they get it, they complain violently.”\textsuperscript{921} Reorganization of the judicial system in 1914 allowed for cases to be appealed to the Supreme Court. Leave for such appeal was granted so often that the Residents who sat on the subordinate Provincial Courts felt as though their time was wasted.\textsuperscript{922}

Courts were often used by entire communities to secure advantages relative to one another. In Aba, they were used to perpetuate inter-village rivalries. Communities would often

\begin{itemize}
\item \textsuperscript{915}WALC, Correspondence, p. 192
\item \textsuperscript{916}Etim & ors v. Eke & ors. (1941), 16 N.L.R. 43
\item \textsuperscript{917}Brooks, “Owerri Province – Report for the Year Ending 30th June, 1920” (1920), p. 1
\item \textsuperscript{918}Brooks, “Owerri Province – Report for the Year Ending 30th June, 1920” (1920), p. 3
\item \textsuperscript{919}Brooks, “Owerri Province – Report for the Year Ending 30th June, 1920” (1920), p. 16
\item \textsuperscript{920}Epo & another v. Ebong & ors. (1942), 16 N.L.R. 112
\item \textsuperscript{921}Adewoye (1977), p. 145
\item \textsuperscript{922}Adewoye (1977), p. 146
\end{itemize}
spend more prosecuting a case than the value of the land in dispute, so much so that Falk concluded that “the Ibo is fond of litigation for its own sake.”923 Even after the legal abolition of slavery, litigation between Ohu and Amadi existed. Though there was no “concerted Amadi-Ohu dispute over land rights,”924 court cases by their nature would tend to involve whole communities, and the “tediousness of the resultant litigation,” Horton (1954) wrote, “tends to show up the value of the old system in which the dispute, like everything else in pre-Administration Ibo-land, would have been kept at the lowest possible level.”925 Res judicata was not enough to stop cases from being reopened – “as long as there was the money or the will,” a boundary could remain in dispute.926 In Abeokuta before 1914, boundary disputes could only be taken to the Native Court; the mixed court had no jurisdiction.927

The effect of the early colonial period on the status of former slaves cut in both directions. Though legally abolished under British rule, slavery was certainly not eliminated in the early colonial period. In 1933, the Abakaliki District Officer toured Ezza, halfway between Enugu and Abakaliki. Some of his informants denied that slavery existed, but others admitted it, presuming the British were happy so long as no slaves were sold.928 Slaves in Ezzama were only allowed to farm certain parts of the land allotted by the sub-clan to their masters.929 Despite the official refusal to recognize slavery, courts by their decisions could perpetuate the servile status of former slaves and their descendents, especially in matters concerning land. Several examples from Lagos are discussed below. In general, slavery was perpetuated by the legal recognition of “service land tenure,” in which failure to render “service” (including labor) was considered sufficient grounds for ejection.930 Among the Nike, the Ohu were admitted to be communities placed on the land by landowning Amadi.931 Such claims could only be pushed so far, however; in Ekpan v. Henshaw & Ita (1930)932, the Divisional Court at Calabar rejected the claims of a household head that, “in spite of emancipation,” a former slave who chose to remain on communal land was still subject to the head who would, then inherit his property. Emmanuel

923 Falk, ff. 45
924 Horton (1954), p. 333
925 Horton (1954), p. 325
926 Adewoye (1977), p. 145
927 WALC, Minutes, p. 450
928 Cox, “Slaves in Ezza,” 1933, p. 1
929 Cox, “Slaves in Ezza,” 1933, p. 2
930 Mann (2007), p. 57
931 Horton (1954), p. 333
932 Ekpan v. Henshaw & Ita (1930), 10 N.L.R. 65
Daniel Henshaw’s contention in Martin v. Johnson & Henshaw (1935) that the deceased’s father was a slave, giving Henshaw the right as head of house to administer his estate, was rejected as untenable because slavery had been abolished. Some former slaves saw their rights strengthened. In 1923, the Obon of Akpuboy (Calabar Division) complained that his tenants, former “house members,” were living in his house for nothing and were refusing to render him service – the leader of this group, Nsidieti, he referred to as an “insolent slob.” Former members of the Efik plantations for the most part resided on the land and cut palm fruit without paying “a penny rent, or performing any services whatever.”

Courts could act as engines for the emergence of private property rights in land. The case of Awo v. Gam (1913) established an often quoted precedent that the court would not invoke customary law to give force to a stale claim that would overturn one of long possession. The facts of the case included uncontradicted evidence that the defendants had occupied land with acquiescence of the plaintiffs for at least 21 years, and that they had been leasing it to Europeans since 1894. In his opinion, Justice Webber admitted that the decision was based neither on English nor African law, but simply “grounds of equity.” For Aba Division, Falk notes that the vesting of land in the community was a “fundamental principle” of tenure. In the past, the chief divided land to families at the start of each farming season, which was then allocated then to individual members. With permanent settlement and population pressure, only virgin land was still apportioned by the chief. The Supreme Court, however, was willing to grant absolute titles. Further, the pre-colonial social order had been upset by the actions of missionaries and officials – a headman’s orders, once obeyed, were when Falk wrote “treated with contempt.” Interestingly, the native court functioned usually as the court of appeal after a town meeting, and a loss in this initial hearing would weigh heavily against any appellant. From the native court, further appeal lay to the district officer, enabling the appellant to lie about his case in front of an

934 Tour of Uwet and Oban Districts, p. 122
935 Tour of Uwet and Oban Districts, p. 122
936 Awo v. Gam (1913), 2 N.L.R. 97
937 Falk, ff. 17
938 Falk, ff. 17. There is some lack of clarity as to whether these individual allocations were heritable. Falk claims they were on page 17, but this does not seem consistent with his argument that they were reapportioned every season on page 39.
939 Falk, ff. 39
940 Falk, ff. 17
941 Falk, ff. 22. It is not clear what the date is on this document. It was written between 1910 and 1933.
942 Falk, ff. 24.
authority with far less information than the lower bodies.943 In former days, “uncultivated” produce was common property; a member of the community could collect as many palm nuts as he wanted, while strangers were readily given permission to do so.944 These rights had passed at the time of Falk’s writing to specific families and compounds.945 Pawnning of land, persons and trees was common before the advent of British rule.946 Sale was not customary, but tenants would plead in front of native courts that they had bought land in the past when they exchanged gifts with headmen in return for the right to settle if rent – another new introduction – was demanded of them.947 In the alternative, they could claim long occupation. The Native Court at Ijebu Ode, despite the official proclamation prohibiting sale to non-Ijebu, upheld the sale of land by a family which had used the proceeds to redeem the pledges outstanding on its other plots, over the objections of two members of the family.948

By diminishing the severity of punishments for violation of the rules of land tenure, the native courts may also have undermined pre-colonial systems of tenure. Native courts also broke apart, albeit only partially, the fusion of religious, executive and judicial powers that existed in many pre-colonial societies.949 Whereas “in the old days,” a Warri Warifi (Warri Province) villager who cut palm nuts during a period when the communal bush was closed would be beaten and his property seized, in 1929 he would be fined ten shillings.950 The Abakiliki punishment for sale of land was death, but N.C. Duncan reported to the WALC that some individuals had “illegally” obtained title and sold their lands, adding that he had “no doubt that a great many of our small wars might have been avoided had native custom been more carefully studied.”951 Prior to colonial rule, stealing yams by day was punishable by sale into slavery among the Uguawkpu of Awka.952 Almost all land cases were enforced by oath.953 At night, it was punishable by death. Ottenberg (1971) notes that the Afikpo, prior to colonial rule, took difficult land disputes the oracle at Aro. Cutting wood on fallow land was an offense punishable by fines

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943 Falk, ff. 24
944 Falk, ff. 34
945 Falk, ff. 34
946 Falk, ff. 37
947 Falk, ff. 39
948 WALC, Minutes, p. 152
949 I am not sure about this point; while appeals lay to secular authorities, the native court in many cases could be a local chief in whom the fusion of power had been strengthened, not weakened.
950 Bridges, “Report on the Oil Palm Survey: Western Provinces” (1938)
951 WALC, Correspondence, p. 191
952 Bridges, “Intelligence Report on the Uguawkpu Group, Awka Division” (1934), Appendix 20
953 Bridges, “Intelligence Report on the Uguawkpu Group, Awka Division” (1934), Appendix 21
or sale into slavery. The District Commissioner of Idah reported that, among the Kukuruku, “the
seller of land became a slave among his own people, and on his death his body was carried to the
forest and placed in a tree; he lost all rights – even the right to be buried in the ground of his own
country.” In some cases, however, courts could mete out severe punishments for violations of
custom; Partridge provides an example from Ijebu Ode prior to 1910 where a man who sold land
and spent all the proceeds on “funeral expenses” was sent to prison for three years. A telling
exchange occurred in 1912 between the Assistant District Commissioner of Ikorodu and the
representative of the Akarigbo of Ijebu Remo:

“We have our boundary trees planted.
Q. Then why are there disputes?
A. Because people pass the porogun trees.”

The native courts often shaped Nigerian land tenure in ways that cannot be simply
described as “individualization.” Dr. Oguntola Sapara told the WALC that, prior to colonial rule
in Egba, the way a debt was reclaimed was for a leper to be brought in to remain with the family
(there were a certain number of lepers kept on hand for this purpose) until the debt was repaid.
Alternatively, a “decrepit” old man or woman would be sent. If he or she died before repayment
was made, then the family would be tried for murder. These practices ended under British
rule; now crops and other property could be sold in court for debt, though he argued that land
could still not be executed against. In Uwani v. Akom (1929), the court introduced the
concept of land rents; though refusing to allow a landlord to evict his tenant for leasing without
his landlord’s consent as had been established as custom in the lower court, appealed instead to
“equity,” and ordered the tenant begin paying a cash rent. In the case of Obonye & ors v.
SCOA & ors (1931), Justice Butler-Lloyd declared that the plaintiff could not demonstrate that
the custom of land rents at Onisha predated European contact. His tenant, Madam Iyaji, had

954 WALC, Correspondence, p. 178
955 WALC, Minutes, p. 150
956 WALC, Correspondence, p. 209
957 WALC, Minutes, p. 262
958 WALC, Minutes, p. 262
959 8 NLR 19
960 Point made by Jeffreys (1936), p 10
961 Not Reported
962 Jeffreys (1936), p. 12
made a sub-lease to a French company without consent of the Mgbelekeke family, of which Obinye was a member – an act that under strict custom would have rendered her liable to eviction.\textsuperscript{963} He sued, claiming half the rents. The court, though declaring that there was no custom of charging rents, awarded the rents of the sub-lease to her descendants, who “because a woman handed a landlord some years ago a kola nut, now enjoy £200 a year as long as the lease lasts and then still have the right to the land.”\textsuperscript{964} Further, this decision halted the extra-judicial development of “kola tenancy,” an institution which had developed out of the growth of commerce in Onitsha, and under which the landlord was entitled to a half-share of any rents obtained through sub-lease.\textsuperscript{965} In another case between the towns of Ikot-Ansu and Ikot-Omin, Calabar, the judge declared that the land in dispute was “no-man’s land,” despite the presence of two claimants to it.\textsuperscript{966}

Native courts were often used to strengthen communal control of land. The simple fact that chiefs could sue on behalf of himself and his tribe was necessarily premised on the assumption that some form of communal tenure existed – and irregularity noted by Chief Justice Speed in 1918.\textsuperscript{967} The decision in Henshaw v. Henshaw, Ewa & ors & Compagnie Francaise de l’Afrique Occidentale (1927)\textsuperscript{968} declared that the beaches of Henshaw Town were communal to the whole town. Younger Igbo planters in Aba division who suffered from the custom of allowing individuals to cut palm fruit regardless of its ownership were hostile towards the native courts.\textsuperscript{969} Amachree v. Kallio & ors (1913)\textsuperscript{970} declared the New Calabar River “the great high road” of the region and common property to the whole country, applying the English common law. In Braide v. Adoki (1930)\textsuperscript{971}, Chief Dick Harry Braide claimed on behalf of himself and the New Calabar Chiefs the right to collect rents from the Okrika people, who were fishing in the New Calabar River and its connecting creeks and erecting both temporary and permanent shelters on the adjoining land. In 1871, a treaty signed aboard the H.M.S. Dido had given the Okrika men the right to “pass through and make fishing settlements in any of the creeks

\textsuperscript{963} Jeffreys (1936), p. 13
\textsuperscript{964} Jeffreys (1936), p. 13
\textsuperscript{965} Jeffreys (1936), p. 13
\textsuperscript{966} Jeffreys (1936), p 9
\textsuperscript{967} Jeffreys (1936), p. 6
\textsuperscript{968} Henshaw v. Henshaw, Ewa & ors & Compagnie Francaise de l’Afrique Occidentale (1927), 8 N.L.R. 77
\textsuperscript{969} Bridges, “Report on the Oil Palm Survey: Ibo, Ibibio and Cross River Areas” (1938)
\textsuperscript{970} Amachree v. Kallio & ors (1913), 2 N.L.R. 105
\textsuperscript{971} Braide v. Adoki (1930), 10 N.L.R. 15
belonging to New Calabar.” This treaty was not mentioned in the 1913 decision, In 1923, the Chief Daniel Kalio on behalf of the Okrikas (though they later repudiated his authority) made an agreement with the New Calabar people in which they agreed to pay an annual rent of 10s per hut. This was signed at Port Harcourt and witnessed by the Resident. Chief Justice Kingdon in the Full Court reinterpreted the agreement to cover only permanent structures; had it covered temporary structures, it would have been voidable for mistake as a result of the 1916 Minerals Ordinance, which had created a common piscary by vesting all rivers and steams in the Crown.

Ilu, at the junction of the Cross and Enyong Rivers, provided an excellent example of how custom was manipulated in the early colonial native courts. The land had originally been occupied by the Itam clan of Obibio, who were driven off by the Itu.972 After the Aro expedition of 1901, the Itams attempted to recover their land through the courts, and the dispute reached the Supreme Court in 1911.973 The Itu, “being sophisticated and thinking they would have a poor case if they relied on a claim of right by conquest, devised a cunning defense. They claimed to be Itams.”974 The Itu leader objected to this strenuously, yelling “You, and Itam, why you eat monkeys.”975 This was not an insult, but rather intended to show that the Itu could not be Itam, for monkeys were food taboo of the Itam. The point was, of course, lost on the judge, who allotted the land to the Itu as communally owned.976 This declaration introduced communal tenure to Itu; later civil suits in 1924 and 1928 revealed that land had been previously owned by families, but from that decision forwards was held by the Head Chief Asukwo Mbang in trust for the Itus, who now owned it communally.977

Lagos provides the clearest case of the emergence of a land market during the period, and in some cases the development of individualized freehold tenure. It is also notable that, in spite of these changes, the family ownership of land burdened by claims framed in terms of custom remained vibrant, though the form of these claims and the manner of their enforcement was affected greatly by the imposition of colonial rule after 1861. Much of the history of land in this period is contained in the invaluable work of Kristen Mann, building on foundations laid by Anthony Hopkins. Oral tradition states that the original Yoruba leader of Lagos, the Olofin,
apportioned land among his sons or local lineage heads, who received titles from him which outlined the territory they were entitled to control.\textsuperscript{978} These Idejos – Ojora, Oloto, Oluwa, Oniru, Onikoyi, Onisiwo, Elegunshin, Onitana, Aromire, Onitolo and Olumegeben – formed a subset of the class of “white cap chiefs,” a group which included also the Akarigbere and Ogalaide.\textsuperscript{979} Traditionally, it was the Oniru, Aromire, Onikoyi, and Onitolo who owned Lagos Island itself.\textsuperscript{980} Mann (2007) accounts for the origin of the Idejo control over land in the nature of the Bini conquest and in the manner in which the population of Lagos expanded. In practice, a number of lineages, including the Ogalede, Akarigbere and the war chiefs controlled land in Lagos in addition to those of the Idejos.\textsuperscript{981} Early settlers claimed land by first occupation.\textsuperscript{982} Migrants, however, usually applied to the lineages of chiefs for land rather than those of other settlers, because powerful patrons offered greater protection than others.\textsuperscript{983} Slaves generally obtained land “through the aegis of their owners,”\textsuperscript{984} though some also obtained land by clearing it or squatting.\textsuperscript{985} Though ostensibly these “eru” and “arota” held no rights to land, individuals and groups of slaves often were allowed by their masters to hold long occupation, enabling them to “develop attachments to the property and sink roots in the community.”\textsuperscript{986} Some were settled on land their masters could not effectively occupy, in order to prevent its encroachment by others.\textsuperscript{987} Those who achieved manumission became virtual owners of their properties.

The Bini, failing to capture Iddo, settled on Ikoyi Point on Lagos Island, occupying the Isale Eko quarter.\textsuperscript{988} Ado (or Ashipa) was made King of Lagos c. 1630.\textsuperscript{989} Legend claims that, after the Bini conquest, he was given the title of Ologun by the King of Benin for carrying the body of Isheru, a Bini general, back to Benin City for burial.\textsuperscript{990} The site of his palace in 1912 was on land known as “Aromire’s Pepper Farm,” which was granted by the Idejo, Chief

\begin{thebibliography}{99}
\bibitem{978} Mann (2007), p. 4
\bibitem{979} Hopkins (1980), p. 794
\bibitem{980} WALC, Correspondence, p. 237
\bibitem{981} Mann (2007), p. 6
\bibitem{982} Mann (2007), p. 6
\bibitem{983} Mann (2007), p. 8
\bibitem{984} Mann (2007), p. 12
\bibitem{985} Mann (2007), p. 13
\bibitem{986} Mann (2007), p. 15
\bibitem{987} Mann (2007), p. 36. Chauveau (2000) has described a similar pattern in post-colonial Côte d’Ivoire, in which rural communities settled migrant farmers around their fringes in order to secure their own boundaries.
\bibitem{988} WALC, Correspondence, p. 242
\bibitem{989} Macaulay (1912), p. 6. This is the most precise date I have found, but it puts the Bini conquest earlier than some other accounts.
\bibitem{990} WALC, Minutes, p. 392, Onisiwo v. The Attorney General (1912) 2 N.L.R. 77
\end{thebibliography}
Aromire, to Ado and his followers. Macaulay (1912) provides a list of Ado’s successors (notably omitting Kosoko): Gabaro (1669), Akisemoyin (1704), Ologunkuture (1749), Adele (1775), Esilokun (1780), Idowu Ojulari (1819), Oluwole (1834), Akitoye (1841), and Docemo (1853). Bini authority was exercised as late as 1831, when Idowu was compelled by the Oba of Benin to commit suicide, and was replaced with Adele for a further two years. The Bini viceroy – variously called the “King,” “Eleko” or “Oba” – as well as his Akarigbere and Abagbon chiefs, exercised authority over land “little different” from that of the early settlers. The Eleko claimed in 1912 that Ado did not disturb the ownership of the Idejos, but could take possession for himself of land anywhere in Lagos. He asked them to give land to the war chiefs in the Marina district, which they did to help protect from Dahomey raids. In later years, however, the Bini chiefs (the Idejos were Yoruba) would ask the Idejos for more land if they needed it, and pay tribute in return. It was not true, however, that the Idejos owned all land on Lagos island; Buchanan-Smith cited the example of a quarter named Oko Faji – Faji was a war chief. The Idejos’ power was even weaker in the rural areas, where they had no control over a plot after it had been granted.

An island less than two square miles in size, Lagos developed into a major West African port during the transatlantic slave trade. Prior to this, Mann (2007) argues, there was no concept of permanent alienation of land. Taiwo Olowo stated that “before the cession of Lagos, land was of no value; if you gave a bottle of rum and kola nuts you could get land and at the end of the year you gave corn or yam or some fruits of the land.” These gifts were acknowledgements of loyalty, not payments of rent. The Imam of the Lagosian Muslim community argued that an ordinary man would pay a bag of cowries and a case of gin, while the

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991 Macaulay (1912), p. 6
992 WALC, Minutes, p. 179
993 Gollmer (C.M.S. Archives, CA 2/043/93) provides a similar list.
994 M.S. Archives, CA 2/043/93
995 Mann (2007), p. 7
996 WALC, Correspondence, p. 179
997 WALC, Correspondence, p. 224
998 WALC, Correspondence, p. 224
999 WALC, Correspondence, p. 224
1000 WALC, Correspondence, p. 224
1001 Mann (2007), p. 1
1002 Mann (2007), p. 8
1003 Hopkins (1980), p. 784
1004 Hopkins (1980), p. 784
chief’s favorites would acquire it for free.\textsuperscript{1005} It was the king and chiefs who dominated this trade during the nineteenth century, since they were the “only persons of substance” who could raise the capital and labor necessary for participation.\textsuperscript{1006} During the mid-nineteenth century, the Obas increased their control over land relative to the Idejos. Akisemoyin, Ologunkutretu and Kosoko had all increased their followings by encouraging immigration and granting land to their clients.\textsuperscript{1007} In his “Historical Notes on Lagos,” Wood claimed that when the white cap chiefs ‘sold’ land, half the process went to the King of Benin.\textsuperscript{1008} Europeans first arrived in Akisemoyin’s time. One of the white-capped chiefs claimed in 1912 that they paid land tax or “Owo Ile” to the King, who divided it among the Idejo.\textsuperscript{1009} Kupodu came to Lagos from Dahomey prior to 1861 with his family and dependents, and given land and the Idejo title of Onisiwo by the Eleko in return for helping to protect Lagos from Dahomey raids.\textsuperscript{1010}

Kosoko took up arms against Akitoye in 1845, replacing him as King. He attempted to bribe the chiefs of Badagry into ejecting the British during 1846.\textsuperscript{1011} Over the next five years, he attempted to manipulate events in Badagry and Abeokuta to his advantage. In November 1851, he refused to sign a treaty with Britain, arguing that the authority lay rather with the King of Benin.\textsuperscript{1012} He was deposed before the end of the month, with Akitoye reinstalled in his place.\textsuperscript{1013} Akitoye encouraged his own supporters to occupy lands that had belonged to the former Oba and his followers – for example, he ordered several of his slave warriors to settle on territory that had once belonged to Oshodi Tapa, a wealthy former slave who had followed Kosoko into exile.\textsuperscript{1014} His aim, as stated by Hopkins (1968), was to “give others a stake in his own permanence.”\textsuperscript{1015} While rural migrants obtained access to land from local families within the existing system of ‘communal’ tenure, European, Brazilian and Sierra Leonean expatriates acquired land from the Oba on terms they equated with individual property.\textsuperscript{1016} One such grant of five pieces of land to the Reverend Gollmer “for the purpose of erecting churches, schools, and dwelling houses” was

\begin{thebibliography}{99}
\bibitem{1005} WALC, Correspondence, p. 228
\bibitem{1006} Mann (1991a), p. ???
\bibitem{1007} Mann (2007), p. 18
\bibitem{1008} WALC, Minutes, p. 392
\bibitem{1009} WALC, Correspondence, p. 229
\bibitem{1010} Onisiwo v. The Attorney General (1912), 2 N.L.R. 77
\bibitem{1011} C.M.S. Archives, CA 2/043/93
\bibitem{1012} Macaulay (1912), p. 4
\bibitem{1013} Macaulay (1912), p. 4
\bibitem{1014} Mann (2007), p. 16
\bibitem{1015} Hopkins (1980), p. 786
\bibitem{1016} Mann (1995), p. ???
\end{thebibliography}
made in 1852.\textsuperscript{1017} After specifying the dimensions of the plots, the agreement stated that “King Akitoye has made over to the Rev’d C. A. Gollmer the above specified pieces of land for the benefit of the Church Missionary Society without any consideration, free of expense & without limit of time he declares by placing his mark to his name in the presence of his chiefs and others.”\textsuperscript{1018} The agreement was signed by Gollmer, Lt. Bedingfield of the HMS Jackal, Tobias Palmer, a clerk in charge of the HMS Bloodhound, and James White, by the chiefs “Ajinniea,” “Pellu,” “Osogbon,” and “Loemi,” and nine elders. Akitoye and Docemo increased their power over land during the decade, as similar newcomers turned to the King rather than the Idejos for grants.\textsuperscript{1019} Idrisu Sabadore’s father acquired land from Akitoye for ten heads of cowries and a demijohn of rum.\textsuperscript{1020} By 1856, there were approximately 1000 Saro living in Lagos.\textsuperscript{1021} The Saro settled primarily at Olowogbowo, while the Brazilians took up residence in the interior of the island.\textsuperscript{1022} Migrants who could not get grants from the Oba began to obtain land on purchase.\textsuperscript{1023} Akitoye granted lagoon frontage land to missionaries, but this was disputed by traders who felt the land was more suitable for trade. This led the Foreign Secretary to announce that trade had priority over missionary interests.

With these grants, a land market emerged that allowed for land alienation, and which coexisted with “traditional” forms. Many older families lost land before they became aware of its new value.\textsuperscript{1024} Putting a start date on the sale of land in Lagos is actually more difficult than it would at first appear. In Eshugbayi Oloto v. Dawoda & Ors (1904), Chief Aromire testified that prior to the cession, a chief and family could sell land, but only if they were under financial difficulties – “the family could sell a piece of land to preserve the rest of the land.”\textsuperscript{1025} The Eleko in 1912 argued that the practice of buying and selling had begun under Glover.\textsuperscript{1026} Evidence in The Attorney-General v. John Holt & Co. & ors. (1910) gave the example of one plot which had been granted by Oshodi (who had cleared the bush) to Shetelu at some point between 1841 and 1851, who sold it in 1853 to Sandeman, who in 1858 sold it to Gerhard Johannsen. Johannsen,
unsure of his title, received a grant for the land from Docemo in 1859 and a Crown Grant in 1865. Though the emergence of a land market preceded the Treaty of Cession, the advent of British rule accelerated its development – by the end of the century it had spread to the mainland.1027 The evidence would seem to suggest that while there was some capacity of families to alienate their land in return for consideration prior to 1851, it was only after Akitoye began making grants that sales existed that were understood as such, and it was not until after the cession that they were recognized as common.

When Akitoye died in 1853, he was succeeded by Docemo. Between 1855 and 1860, Docemo’s grants were issued “under the direction of the British Consul.”1028 Macaulay (1912) argues that the text of these Grants made reference to the “advice and consent” of the Idejos,1029 but Mann (2007) notes that, of Docemo’s 76 grants to Brazilians, Saro, and others made between 1853 to 1861, only six were made with such a stipulation.1030 Only four of these grants were made to women.1031 Macaulay (1912) provides the procedure, which exposes the interesting power dynamic that existed between the Eleko and the Idejos:

“An applicant asks the King for land.—The King would ask where he wanted the land.—The applicant names the district.—The King sends to the chief of that district and gets land allotted there for the applicant who is accompanied by a messenger bearing the King’s Staff, which messenger places applicant in possession with the consent of the chief who allotted the land in his district. A charge of ten heads of cowries (then equivalent to two shillings and six pence, 1854-1860) was then made, which sum the applicant paid for the services of the staff.”1032

The fee, he argues was analogous to a Stamp Fee.1033 Though the King would receive presents such as rum or tobacco, these would be shared with the Idejo concerned.1034 An example of one such grant, to James George in 1853, specified its dimensions and granted the land “for his use and benefits and for his and his successor for ever.”1035 A typical immigrant who acquired land from a chief during this same period would bring four bottles of rum, a kola nut and anywhere between one thousand and twenty thousand cowries to the chief, who would consult his

1027 Mann (2007), p. 22
1028 Macaulay (1912), p. 10
1029 Macaulay (1912), p. 10
1030 Mann (2007), p. 20
1031 Mann (1991a), p. ???
1032 Macaulay (1912), p. 10
1033 Macaulay (1912), p. 10
1034 Macaulay (1912), p. 10
family. The Chief Oloto similarly stated that, before the cession, if the King wanted to grant land in the district of Oto, he would go through the chief, but the chief dare not refuse.\textsuperscript{1037}

Hopkins (1968) accounts for the British annexation in 1861 in the need of British and Saro merchants to secure their property rights, including rights over land. Docemo could provide political stability, but he was not “progressive”; a system of “anonymous credit” requires the ability to use of land as collateral, which in turn necessitates alienability of land – a development that could not arise under the sovereignty of Docemo.\textsuperscript{1038} In 1861, McCorsky, the British Consul, asked the local European and Saro residents if they were amenable to the idea of annexation. They were, and had much “reason to complain about the protection of property under the rule of Docemo.”\textsuperscript{1039} The Treaty of Cession\textsuperscript{1040} contained three articles. The first declared that “I, Docemo, do, with the advice and consent of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors for ever, the Port and Island of Lagos, with all the rights, profits, territories, and appurtenances whatsoever thereto belonging…” The second permitted Docemo to try disputes between Africans, with an appeal allowed to English law. The third stated that his seal, when used in the transfer of land, would be taken as proof that no other African claims existed to a piece of land. No mention was made of the King of Benin.\textsuperscript{1041} The initial draft of the treaty, submitted on August 5, contained only Article 1, and was protested against immediately by the Idejos. Even the final version signed the next day was objected to, and they prevented Docemo from ratifying it (and settling his stipend) for a further six months.\textsuperscript{1042} The proclamation read the next day mentioned only a cession of sovereignty, and said nothing of land.\textsuperscript{1043}

No Idejo chief can be conclusively shown to have signed the treaty.\textsuperscript{1044} Rather, “they were protesting to a man, the twenty-four of them, from the 1\textsuperscript{st} of August, 1861, up to the 11\textsuperscript{th} of

\textsuperscript{1036} WALT, Correspondence, p. 230
\textsuperscript{1037} WALT, Minutes. p. 524
\textsuperscript{1038} Hopkins (1980), p. 787-788
\textsuperscript{1039} Hopkins (1980), p. 788
\textsuperscript{1040} This is quoted in extenso in The Attorney-General v. John Holt & Co. & ors. (1910), 2 N.L.R. 1
\textsuperscript{1041} Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
\textsuperscript{1042} Macaulay (1912), p. 5
\textsuperscript{1043} Macaulay (1912), p. 13
\textsuperscript{1044} Macaulay (1912), p. 6-7. Chief Justice Osborne in Onisiwo v. The Attorney General (1912), 2 N.L.R. 77, attempted to decipher the signatures on the treaty. He surmised that “Rocamera” might have indicated “Aromire,” and that “Obalekow” might have been a poor transliteration of “Obanikoro,” but then argued that the point was moot.
February 1862.”\textsuperscript{1045} Their fears were not assuaged until a meeting with Governor Freeman in early 1862, in which he assured them that their rights would be protected. In a dispatch to Earl Russell, he stated that

“The chiefs are the rightful possessors of the land upon which they depend for their subsistence. Whenever war breaks out and the King is attacked they retire into the bush, to return again when peace is reestablished and are then acknowledged by the victors as the legal owners of the soil. Thus the King and war-men hold no lands unless by grant from the white-capped chiefs.”\textsuperscript{1046}

By no means, then, was Freeman’s initial policy that the full ownership of land had passed to the Crown. Mann’s (2007) position here is unclear; she argues both that this was in fact, Freeman’s policy, but also that early colonial land policy was formed by the uncombined actions of individual administrators in response to local conditions.\textsuperscript{1047} It would appear rather that Freeman and later Glover’s solutions to a series of difficulties concerning land – the accumulation of land by Saro, the settlement of Hausa soldiers, and the arrival of Egba refugees – presupposed governmental authority over land, but the manner in which he carried out these initiatives clearly demonstrates that he did not believe that full ownership lay with the Crown. Perhaps the ambiguous phrasing of the WALC Draft Report, which claims that Glover viewed all land as “within the gift of the Crown” is a more appropriate description of early colonial policy in Lagos.\textsuperscript{1048} While Glover always acquired land with the consent of the chiefs, later Governors did not always bother with this nicety.\textsuperscript{1049} Though prior to 1863 the Government acted as though it was competent to administer the lands of Palma, Leckie and Badagry, a separate treaty was signed with Kosoko in that year which covered Palma and Leckie, while another was obtained from the Chiefs of Badagry.\textsuperscript{1050}

Freeman issued land grants to individuals quickly after his arrival; his goal here was to favor those Lagos residents who were improving their land to the exclusion of non-residents making claims over it.\textsuperscript{1051} In 1864, missionaries complained to the colonial Lagos Government

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\textsuperscript{1045} Macaulay (1912), p. 7
\textsuperscript{1046} Macaulay (1912), p. 6
\textsuperscript{1047} Mann (2007), p. 23
\textsuperscript{1048} WALC, Draft Report, p 148
\textsuperscript{1049} WALC, Correspondence, p. 229
\textsuperscript{1050} Onisowo v. The Attorney General (1912), 2 N.L.R. 77
\textsuperscript{1051} Mann (2007), p. 24
\end{flushleft}
that it was seizing Saro land to make roads in Lagos, without full compensation.\textsuperscript{1052} The complaints of Saro whose claims were denied led the Colonial Office to pressure the Governor to sort out what land in Lagos was Crown property and what was subject to grants.\textsuperscript{1053} To this end, Ordinance 3 of 1963 established a committee to enquire into title in Lagos.\textsuperscript{1054} The Land Commission Court began sitting in 1864. The first three commissioners – Eales, Mayne, and McCoskry – included only one with legal experience (Mayne) and one familiar with Lagos (McCoskry).\textsuperscript{1055} Contrary to its terms of reference, the court issued certificates of title to the parties – generally individuals – whose claims it acknowledged.\textsuperscript{1056} Individuals who had received written grants from Docemo had their grants recalled and were issued fresh certificates by the court.\textsuperscript{1057} These documents came to be known as Crown Grants. From 1863 until 1914, more than 4000 were issued by the Crown.\textsuperscript{1058} Though Article 3 of the Treaty of Cession provided that Docemo’s stamp would serve as proof that no native claims existed on a plot of land, none of the Crown Grants that were later issued bore it.\textsuperscript{1059}

Governor Glover arrived in 1864, and began to encourage his own clients, prominent chiefs and their slaves to apply for Crown Grants.\textsuperscript{1060} Notably, after Oshodi Tapa’s death, he encouraged the heads of the compounds he had founded at Epetedo, a group which included multiple slaves, to apply for Grants.\textsuperscript{1061} Idrisu Sabadore, Imam of the Brazilian Community, told Buchanan-Smith that he had felt his title was secure enough to begin with, but he obtained a crown grant for it “because the governor said that everyone should have a grant for his land.”\textsuperscript{1062} Interestingly, one application submitted to the Land Commission Court in 1865, quoted by Macaulay (1912), claimed that the parcel on Badagry Street had been “bought in Public Auction in 1859 and registered in the books of the Consulate.”\textsuperscript{1063} This grant was recommended. In another case, the Chief Otto stated that he had “given the land to claimant unconditionally and

\textsuperscript{1052} Biobaku (year), p.???
\textsuperscript{1053} Mann (2007), p. 24
\textsuperscript{1054} WALC, Draft Report, p. 60
\textsuperscript{1055} Mann (2007), p. 25
\textsuperscript{1056} WALC, Draft Report, p. 60
\textsuperscript{1057} WALC, Draft Report, p. 60
\textsuperscript{1058} WALC, Draft Report, p. 60
\textsuperscript{1059} Macaulay (1912), p. 5
\textsuperscript{1060} Mann (2007), p. 25
\textsuperscript{1061} Mann (2007), p. 37
\textsuperscript{1062} WALC, Correspondence, p. 234
\textsuperscript{1063} Macaulay (1912), p. 11
for ever.” The Land Commissioners’ Court “systematically” favored certain forms of claim – those based on Docemo’s grants, testacy, sale, gift, and long occupation. Few of the claims advanced were based on grants from Idejos. Rather, individuals traced their titles back to gifts from Kings as far back as 1832. Whether this reflected the true nature of title in Lagos or occurred because the same individuals who went to the King for land were those who most actively pursued Crown Grants, this fact hurt the Idejos in their later claims to own the lands of Lagos island. If an applicant was in possession of more land than had been given under one of Docemo’s grants, the commissioners generally were willing to include it under the Crown Grant, provided the occupant paid for the added land. If a claim was found to be false, the land was not reverted to the Crown, but rather was to be restored to the rightful owners in the event they could be discovered.

After 1868, the Land Commissioners’ Court was abolished, and new applicants for Crown Grants were required to satisfy the administration that their claims were valid. Ordinance 9 of 1869 allowed any person who had occupied land for at least three years without having paid rent for it to apply to the Administration for a Crown Grant to cover the property. The same ordinance also gave the Crown the right to claim reversion over any land for which the occupier could not produce a valid title within six months. By recognizing the rights of any individuals with three years of rent-free occupation, the Crown was also failing to assert that it held ownership rights over the Island of Lagos. The text of these grants changed over time. From 1866-68, they read “I,..., having by Commissioners appointed for the purpose, duly investigated the claim set forth by...”. From 1868-78, their wording began with “The Administrator, ... having duly investigated the claims set forth by ...”, while from 1879 on, a Crown Grant declared that “I, the Governor, ..., by the power and authority given unto me do in the name and on the behalf of Her Majesty grant and assign unto ...”.

1064 Macaulay (1912), p. 11. I find this example a little confusing. Macaulay was defending the idea that the Idejos owned the land, but there is no Idejo Otto. Does this refer to the Oloto?
1065 Mann (2007), p. 25-26
1066 See, for example, Pennington’s judgment in Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
1067 The Attorney General v. John Holt & Co. & ors. (1911) 2 N.L.R. 1
1068 Onisowo v. The Attorney General (1912), 2 N.L.R. 77
1069 WALC, Correspondence, p. 225
1071 Macaulay (1912), p. 11
1072 Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
In the period 1863-1866, roughly 70% of all recipients were Saro, Brazilians, or other expatriates, but by 1869 the proportion of locals who receiving new grants rose to about half. While both men and women took advantage of the Crown Grants to accumulate land, women suffered serious disadvantages which have been identified by Mann (1991a). In the pre-colonial period, virilocal exogamy drove women to assert their claims over land less than men. Most of the Crown Grants went to Saro, who had absorbed patriarchal attitudes from both Western and Yoruba cultures. The Grants were usually in men’s names, and whether or not it was intended that he would have sole control over a parcel of land, this was usually the result. Though official policy was not discriminatory, men like Glover formed closer relationships with men than with women. The labor of women and domestics freed men’s time for income-earning activities. Women also had less access to information and capital, and were vulnerable to appropriation – “constant vigilance” was needed to protect their holdings. Missions and colonial courts, however, were new authorities to which women could turn; albeit patriarchal, a Christian church would readily sympathize with a woman who claimed her husband forbade her from attending church. In 1861, the population of Ebute Metta and Apapa was small, because of the fear of Egba raids. Some individuals crossed over to farm during the day. Only 33 grants were granted in Ebute-Metta, however; Abeokuta protested to Palmerston, claiming the territory. Glover was instructed to cease issuance of Grants, and British authority over Ebute-Metta was not confirmed until the 1894 treaty with the Egba nation settled its boundary with Lagos.

Even Docemo took out Crown Grants over his property. Generally, the Idejo did not participate in the Crown Grants, and did not make applications for them. Mann (2007) ascribes this to a “silent protest” against the policy. In general, they did not prosper under the new trade. Custom forbade them from holding more land than they can use, and the “ground was literally cut from under them as their nominal tenants acquired official grants in the 1860s.” Further, their uncertain political position under early colonial rule weakened their rights over the allocation of land. The Chief Oloto claimed that he had asked Glover’s permission to give land

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1073 Mann (2007), p. 30-31. Her analysis is based on comparison of the names on the Grants.
1074 Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
1075 Macaulay (1912), p. 12. This figure neglects the Glover tickets, discussed below.
1076 Macaulay (1912), p. 12
1078 Mann (2007), p. 28
1079 Hopkins (1980), p. 784
to a Mr. Ashcroft, a European, since he “should have been afraid of getting into trouble.”

Lees told him that he did not have the power to give out land. In 1912, Buchanan-Smith estimated that the Idejos had parted with at least half their original property. Chief Ojora claimed that many of these sales had occurred without their consent – though the Idejos could contest them in court, they often lost. “We would be more powerful if land had not been sold in this way,” he complained. Much of their land was, however, sold off by the Idejos themselves in order to pay for inaugural and burial expenses. A surveyor told Buchanan-Smith that “they frequently make a livelihood out of the sale of land.” Tribute to the Idejos came to be paid in cash rather than oil. The failure of the Idejos to assert their claims during this period was used against them in later court cases. In 1921, Justice Pennington called the Idejos “an interesting if pathetic relic of the past.”

The actual rights awarded by the Crown Grants were not, however, at any point specified. This left open the possibility of perpetual reinterpretation of their meaning described by Berry (1993) as a general feature of access to land in colonial and postcolonial Africa, creating both uncertainty about the actual security they conferred and incentives for litigation, especially towards the end of the nineteenth century. As Mann (2007) puts it, “in a very real sense, the documents conveyed whatever rights in landed property the recipients could use them to exercise.” This can explain why the Crown Grants themselves were often stolen, even though the name on the grant need not be the name of the thief. Lloyd (1959) argues that the Crown Grants and Glover tickets not only “obscured” traditional tenure, but provided “magnificent scope” for litigation. A head of household would generally apply for a grant to cover the whole family, and the Crown Grant would be made out in his name alone. In the Epetedo quarter, entire communities raised the £2 necessary, but only a single name was put on

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1080 WALC, Minutes. p. 524
1081 WALC, Minutes. p. 524
1082 WALC, Correspondence, p. 227
1083 WALC, Correspondence, p. 227
1084 WALC, Correspondence, p. 231
1085 WALC, Correspondence, p. 244
1086 WALC, Correspondence, p. 227
1087 See, for example, Justice Ross’ decision in Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
1088 Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
1089 Mann (2007), p. 29
1090 Mann (2007), p. 31
1091 Mann (2007), p. 38
1092 Lloyd (1959), p. 106
the grant.\textsuperscript{1093} Many of the major cases involving family property and slaves are discussed below. In Eshugbayi Chief Oloto v. Dawuda & ors,\textsuperscript{1094} the Oloto claimed land at Ebute Metta that had been given to Momo Asosi by Belo Oloto as a barrier against Egba raids. The justices in the case disagreed about the Oloto’s rights to evict Asosi’s successors. Though the defendants denied Oloto’s title, claiming that Asosi had been given the land outright (as opposed to the Oloto’s contention that he had only been given permission to farm), there was no evidence that he had ever paid rents, while the denial of title had come only after a demand for rent was made. The same modes of acquisition – purchase, gift, testacy, and long occupation – that had been accepted by the Lands Commissioners in recommending a Crown Grant would also be applied by the courts in later years to give ownership in the absence of a Grant.\textsuperscript{1095}

In 1865, Governor Glover approached Dosunmu Chief Onikoyi, the Idejo with authority over the Ikooyi Plains on the eastern part of the Island, with a view to providing land for retired Hausa soldiers.\textsuperscript{1096} Witnesses in Onikoyi v. Jimba (1904) claimed that Glover “looking towards the town of Lagos (westwards) and holding out his arm at right angles to the direction he was looking, said to the Chief, that all the Chief’s land between where he stood and the town of Lagos should be for the Queen and that the land behind him should be for the Chief and his people,” and that Onikoyi agreed.\textsuperscript{1097} Macaulay (1912) points out that this further shows Glover’s admission that the territory had not already been ceded to the crown. The judge in this case found that the land itself had been granted “exclusively” for the Hausas to use for farming.\textsuperscript{1098} By 1911, annual rent paid from the New Hausa Settlement was £51 per year, with none of this paid to the by-then destitute Onikoyi family.\textsuperscript{1099} In 1908, the Government found that much of the land had been deserted for several years, and the general position was unclear. In theory, the Crown could have chosen to classify the lands as “Crown,” and “Private” lands, with the former including lands under Crown Grants and the latter encompassing lands that had either been granted by Docemo or never possessed by him.\textsuperscript{1100} Instead, the Government chose to

\textsuperscript{1093} WALC, Correspondence, p. 237
\textsuperscript{1094} Eshugbayi Chief Oloto v. Dawuda & ors, 1 N.L.R. 57
\textsuperscript{1095} Mann (2007), p. 32
\textsuperscript{1096} Macaulay (1912), p. 14
\textsuperscript{1097} Macaulay (1912), p. 14
\textsuperscript{1098} Macaulay (1912), p. 15
\textsuperscript{1099} Macaulay (1912), p. 15. In fact, the successor to the late Chief Onikoyi in 1912 could not even afford the cost of his own installation.
\textsuperscript{1100} Ajakarye & another v. Lieutentant-Governor, Southern Provinces (1929), 9 N.L.R. 1
investigate the private claims to land. The Ikoyi Lands Ordinance (1908) was passed with the intent of finding the boundaries of all private lands in Lagos East of the MacGregor Canal, so that the areas of Crown Land could be discovered.\textsuperscript{1101} It was not clear to the government what land had been given to the Crown in 1865, what land the Crown had alienated since then. The Ordinance allowed for two forms of private owners on the Ikoyi plains – those whose land had never been given to the crown, and those who had received Crown Grants. If the latter could prove their claims, they were issued new Grants and their land was demarcated. Disputes were referred to the Supreme Court, and lands to which no claim was established became Crown Land. The preamble of the act itself admitted that part of the island had never been ceded to the Crown.\textsuperscript{1102} Section 4 of the Ordinance stated that approved Crown Grants would be surveyed, and fresh grants would be issued to their holders. This part of the Ordinance quickly became a dead letter.\textsuperscript{1103}

The question was reopened in 1941, when the Government acquired land in Ikoyi. In Chief Secretary to the Government v. James George & ors. (1942), twenty three claimants had applied for compensation on the basis of Crown Grants, but had been claimed against by the Onikoyi family. The government took the action in order to determine who exactly deserved to be compensated. The Chief Onikoyi argued that that the land given to Glover was not an outright gift, but had been allotted for the specific purpose of providing farm-land for former soldiers. When the last of these died in 1916, the land had reverted to the Onikoyi chieftancy. Butler-Lloyd in his decision referred to Aluko v. Jimba (1904), in which the then Onikoyi had attempted to establish title to the land occupied by the Hausas, without raising the issue of reversion. The court there had found that the land was in fact owned by the Crown, and so Butler-Lloyd found that the holders of the Crown Grants were the rightful parties to receive compensation.

An anti-European uprising at Abeokuta occurred in 1867, pushing a number of Egba Christians to flee towards Lagos.\textsuperscript{1104} In order to settle the refugees, Glover acquired in 1818 a large plot of land at Ebute Metta from the Oloto family. Many of the specifics were laid out in Oloto v. Williams & Williams (1943)\textsuperscript{1105} and Garuba v. The Public Trustee (1947)\textsuperscript{1106}.

\begin{footnotesize}
\begin{enumerate}
\item[1101] Lieutenant-Governor, Southern Provinces v. Ajakaiye & Laditan (1927), 7 N.L.R. 21
\item[1102] Ajakarye & another v. Lieutenant-Governor, Southern Provinces (1929), 9 N.L.R. 1
\item[1103] Chief Secretary to the Government v. James George & ors. (1942), 16 N.L.R. 88
\item[1104] Mann (2007), p. 27
\item[1105] Oloto v. Williams & Williams (1943), 17 N.L.R. 27
\item[1106] Garuba v. The Public Trustee (1947), 18 N.L.R. 132
\end{enumerate}
\end{footnotesize}
settlement was laid out “on the usual lines of reservations for strangers in this country.” The allotments were laid out in 300 ft by 300 ft blocks, divided into plots either 100 feet square or 100 ft by 150 ft, and allocated by 700 numbered tickets. Justice Butler-Lloyd argued that, since no consideration had been given by Glover to Oloto, the land was unlikely to have been an outright gift. As refugees, the allotees may have expected to soon return to Abeokuta. Had Glover actually believed the land had been conveyed to the Crown in fee simple, he could have provided them with Crown Grants. Of 700 settlers who received the “Glover Tickets,” the majority did not apply for Crown Grants, while much of the land that had been set aside for their use remained unoccupied.\footnote{Mann (2007), p. 27} This confusion was exacerbated by destruction of records – a Lands Commissioner burned the government’s counterfoils in 1885, while the actual holders of the tickets often lost them.\footnote{Mann (2007), p. 28} Because of the absence of documentation, only “slight evidence” was needed to acquire a decision that a Glover Ticket gave freehold equivalent to that of a Crown Grant, encumbered only by the family’s rights. Usually, receipts for money purchase were entered as evidence of ownership, and revealed that the land had changed hand multiple times. Justice Brooke wrote in 1947\footnote{Garuba v. The Public Trustee (1947), 18 N.L.R. 132} that “formal declarations of title, so common in our reports and so conspicuous by their absence in English reports, were granted owing to the complexity of tenure on pleadings which lacked particularity.”

“At one time” it had been thought that the Crown was the absolute owner of the property, though later decisions found that the land in fact belonged to the Oloto family. Justice Tew in Owo v. Egbe & ors. (1929) found that the land had been “placed at the disposal” of the governor for settling Egba refugees and for no other purpose. Though the decision recognized both forfeiture on alienation and the reversionary right of the Oloto family, but that these rights were only operative if the family sought to exercise them without delay. A sale would be voidable but not void. The financial distress of the Oloto family led many of these properties to be sold at auction during the late 1940s to cover their debts. Ordinance 21 of 1947, the Glover Settlement Ordinance, attempted to clarify the tenures involved by creating estates free of competing interests except for those recognized by “native law and custom”, those which had emerged since 1868, and the reversionary claims of the Oloto family. This of course did not end the litigation,
but instead changed how claims were framed. Edwin v. Thomas (1948)\textsuperscript{1110} concerned the case of Thomas, a descendant of a Crown Grant holder in the Glover settlement, whose land had been acquired by the Government in 1903 but never occupied, and which had later been sold to the plaintiff in a 1947 execution of a writ of fi fa. He claimed that neither Thomas nor the Crown had any title as a result of the Glover Settlement Ordinance. Justice Gregg, however, stated that a retrospective ordinance must be interpreted as having a greater retrospective effect than made necessary by its language; a title cannot be extinguished except expressly. He found that the Thomas family’s long possession gave it a good title.

After 1850, many of the prominent chiefs in Lagos created new farms cultivated by their slaves and dependants. Abolition did not end slavery in Lagos, however, and in fact a depression in the 1880s may have worsened pressures on labor. Competition for labor between owners allowed some slaves access to land and housing, and slaves could attempt to claim ownership of this property through the courts. Slaves themselves attempted to sell the lands they occupied (and often succeeded), with or without a Crown Grant.\textsuperscript{1111} Masters did not always know about these sales – a fact that reveals much about the master-slave relationship in nineteenth century colonial Lagos.\textsuperscript{1112} Most slaves who purchased land could only obtain small plots, but some – notably Taiwo Olowo and Sunmonu Animasaun – became wealthy and held multiple plots.\textsuperscript{1113} Animasaun owned land not only in Lagos, but also in Abeokuta and Ilorin;\textsuperscript{1114} not only, then, could private property in land be spread from Lagos to the interior by Europeans and the European-educated, but it could be carried into the countryside by illiterate ex-slaves like Animasaun. Faji, a slave of Ashogbon Oda, was purchased c. 1780 and died in 1850.\textsuperscript{1115} Jacob Ogbuiyi was purchased by Ashogbon Oda c. 1820, but was redeemed by his parents and chose “of his own free will” to remain with Oda. On Faji’s death, he was placed on Faji’s land by Oda, taking charge of Faji’s subordinates. He obtained a Crown Grant in 1868, which was made out in his own name. Witnesses in the case claimed that this had been done with the knowledge of the Ashogbon. Ajose, the heir of the Ashogbon, claimed by Petition of Right to have the Grant set aside, though he admitted the defendant would retain the right to remain on the land. In his

\textsuperscript{1110} Edwin v. Thomas (1898), 19 N.L.R. 22
\textsuperscript{1111} Mann (2007), p. 40
\textsuperscript{1112} Mann (2007), p. 40
\textsuperscript{1113} Mann (2007), p. 41
\textsuperscript{1114} Mann (2007), p. 41
\textsuperscript{1115} Ajose v. Efunde & ors. (1892), printed in WALC, Correspondence, p. 246-248
decision, Chief Justice Smalman-Smith stated that he had “repeatedly affirmed by judgments in this court the rights of private owners of land to recover possession thereof where there is a tenure by service or by rent or tribute and the service …, rent or tribute is refused by the tenant, and when such a tenant deliberately applies himself to injure or annoy his chief or his family.” Despite this recognition, he refused to grant the petition, arguing that that if thirty years occupation could be disturbed by the “shadowy claims of the Ashogbon,” there would be no security of tenure in Lagos. Not all slaves who escaped the obligations imposed by tenancy became owners in fee simple. Giwa & ors v. Giwa & ors. (1932)\textsuperscript{1116} asked the court to consider the case of the descendants of the Arotas of Momo Asisi, a follower of Akitoye. On Asisis’ death, his slaves had succeeded to the land in question, and in 1868 Odun Baku obtained a Crown Grant in his own name. On his death in 1884, his son Adekanbi executed a deed of trust on favor of all the Arotas. The deed itself established that they were joint tenants and tenants in common, who held the land for the joint benefit of them and their descendands, and that all members must consent for the land to be sold. It was signed by Adekanbi and twenty Arotas. When the case came before the court, the plaintiffs – the majority of the owners – wished to sell the land, while the defendant did not. The plaintiffs had based their claim on customary law, but because all their rights came from the deed, Justice Butler-Lloyd applied English law, in which any co-tenant can enforce partition, and ordered the sale to proceed.

Slave-owners, however, could retain control of their landed property if they framed their court claims in the language of tradition, rather than ownership.\textsuperscript{1117} In Ajosheh (Ashogbon) v. Efunde & Ors (1892), the Chief Ojora testified that slaves held no rights against the master and his family, and could be turned out for misbehavior. They could not inherit in the event of their master having no heirs.\textsuperscript{1118} In Ashogbon v. Somode & Oku (1885), the court supported a chief’s right to evict tenants that refused to perform service; “several white-capped chiefs” had agreed that this was the law.\textsuperscript{1119} In Otun & ors v. Ejide & ors (1932)\textsuperscript{1120} the court found that, despite the indifference of the Pashi family, the heirs of its Arotas had not attempted to exercise any acts of ownership against their overlords, and had thus failed to acquire any title, despite the Crown Grants taken out in their own names. In 1911, the descendents of Kuti, who had come to Lagos

\textsuperscript{1116} Giwa & ors v. Giwa & ors. (1932), 11 N.L.R. 160
\textsuperscript{1117} Mann (1995), p. ???
\textsuperscript{1118} WALC, Minutes. p. 525
\textsuperscript{1119} Quoted in Oshodi v. Dakolo & ors. (1930), 9 N.L.R. 13
\textsuperscript{1120} Otun & ors v. Ejide & ors (1932), 11 N.L.R. 124
“many years ago” and been placed on land by the Obanikoro, conveyed land to Alimi Kuti without the Obanikoro’s knowledge.\textsuperscript{1121} The Obanikoro only became aware of the conveyance when Alimi Kuti defaulted on a loan from Chief Suenu, who sold the land to Oluwa at auction. The Chief Obanikoro during the case entered evidence that Kuti was a slave, and thus did not have the right to alienate his parcel. The judge in the case found that it did not matter if Kuti was a slave, or a brother-in-law of the Obanikoro as the defendants had claimed, because under Yoruba custom “such a thing as the complete alienation of family property was unheard of.” As late as 1937, Justice Butler-Lloyd held that the descendants of the slaves of Soyenu, by virtue of their status, only held rights of occupation, and could not register as owners.\textsuperscript{1122} Cases based on the rights of Arotas are found as late as 1954, in the final volume of the N.L.R. series.\textsuperscript{1123}

Chief Oshodi Tapa was a Nupe slave of Ashilokun, the King of Lagos and father of Kosoko. When Kosoko made himself King in 1845, Oshodi was appointed as his war chief. Oshodi also accumulated a good deal of personal wealth as a trader. He followed Kosoko into exile in 1851, and returned to Lagos with him in 1862. He befriended Glover, who helped him acquire a large block of land at Epetedo from the Chief Aromire on which to settle with his slaves. His own land had been sequestered in his absence, and so he had to secure new territory. The conditions of this grant were, most likely, never put to writing.\textsuperscript{1124} He had twenty-one compounds built, and put a headman or “oloko” in charge of each. When the Crown Grants were introduced, the slaves were encouraged to take out grants, which they received in their own names.\textsuperscript{1125} From “time to time,” many of the friends and relations of Oshodi’s arotas “drifted” in and out of these compounds, and were given houses of their own. They began to deal with the land as if it were their own property.\textsuperscript{1126} The court in Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929) found evidence of mortgages over the properties dating to 1872, and sales to 1893.

The Oshodi lands at Epetedo were a source of considerable litigation during the nineteenth and twentieth centuries. In Alaka v. Alaka (1904)\textsuperscript{1127} the court granted that Jinadu Alaka, a subordinate slave in a compound that had been granted to Oshodi to Oguntusi, one of

\textsuperscript{1121} Akeju v. Suenu, Kuti and Oluwa (1925), 6 N.L.R. 87
\textsuperscript{1122} Dania v. Soyenu (1937), 13 N.L.R. 143
\textsuperscript{1123} Onisiwo v. Fagbenio (1954), 21 N.L.R. 3
\textsuperscript{1124} Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), 10 N.L.R. 36
\textsuperscript{1125} WALC, Correspondence, p. 244
\textsuperscript{1126} Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), 10 N.L.R. 36
\textsuperscript{1127} Alaka v. Alaka (1904) 1 N.L.R. 55
his slaves, had sufficient interest in the land to oppose its sale to cover the debt of another member. Oguntusi had obtained a Crown Grant for the property in his own name. Evidence was taken from several chiefs, and on the basis of their testimony, Justice Nicoll found that the underslave is property of the slave’s master, that the head slave has more rights over his master’s house than do underslaves, and that if the master provides a compound to his slaves, then it is owned equally by all of them. In Jones v. Ali Agire (1908), the court held that a slave’s land did not revert to the Oshodi family on death.\footnote{1128}

The most famous of the cases involving Oshodi’s former Arotas was the “Dakolo Case” – Oshodi v. Dakolo & ors. (1930)\footnote{1129}, in which the Privy Council declared that the Oshodi family had a “contingent right of reversion” which, no matter how minute, required the Crown to compensate the Oshodi family for acquiring land. The defendants in the case, descendents of Oshodi’s Arotas, provided the court with considerable evidence that sales and mortgages of the Epetedo lands had occurred – including to Alfred Oshodi, a “well-known moneylender.” Though descended from slaves, none of the defendants paid rent, tribute or service. One example occurred when Lawani Folami purchased a plot in 1912 from Abudu Karimu Damola. This was sold again in 1914 to Brimah Balogun, who mortgaged it to Alfred Oshodi and to a Scottish company. The defendants in Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929) cited similar evidence as was given in the Dakolo Case, that over the past fifteen years there had been multiple sales of Epetedo lands without interference of the Oshodis. Justice Ross refused to set aside one such sale in Nasa v. Ajetumobi & ors (1918) because one of the plaintiffs had also sold land in the same compound.\footnote{1130} Many of these transactions took place between 1912 and 1924, when there was no elected Chief Oshodi. When the new Oshodi was installed, he acted quickly to defend his family’s ownership of the land. In 1925, he evicted Amodu Inasa for attempting to sell land. In Inasa & ors v. Oshodi (1930), the court held that he could also evict the rest of Inasa’s family for this transgression.\footnote{1131} He held a family meeting in 1926, in which he declared that he wished to stop the sale of the family lands.

The Privy Council judgment in the Dakolo case declared that the paramount chief was the owner, but did not hold the fee simple, while the possessors of the Crown Grants only held the

\footnote{1128} Quoted in Oshodi v. Dakolo & ors. (1930), 9 N.L.R. 13\footnote{1129} Oshodi v. Dakolo & ors. (1930), 9 N.L.R. 13. Many of the facts concerning Oshodi’s background are contained in this case, though they are also discussed by Macaulay (1912).\footnote{1130} Quoted in Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), 10 N.L.R. 36\footnote{1131} Inasa & ors. v. Oshodi (1930), 10 N.L.R. 4
land in trust. This did not end the legal struggle for control of the land between the Oshodi family and the descendants of the former arotas, but instead changed the language of their claims. In Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), the legal counsel employed terms such as “absolute ownership under native law.” One contended that, while the Crown had acquired the “dominium directum” of the land, this had left customary tenure undistributed. The fee simple had lain dormant, and was revived when an instrument such as sale or mortgage was applied. Cases based on the rights of the descendants of Oshodi’s Arotas were being heard as late as 1947.1132

Glover left Lagos in 1872. Between 1881 and 1888, 112 occupancy grants were given by the government for swamp land. Provided that these were filled in within six months, the government would convert these documents into Crown Grants.1133 Many of these, however, were sold and mortgaged without any improvements being made.1134 Holders of the occupancy grants treated them as documents of title, and clearly could obtain value from them without making investments in land reclamation. The government abandoned the policy in 1893. By 1883, sales and mortgages of land had grown so common that ordinances were introduced for registering the instruments by which these were executed.1135 In 1897, the government forbade sales of land to foreigners, permitting only leases.1136 In 1898, Denton objected to a proposal of allocating the remaining lands on the island through payment of quit rent, and opted instead to continue with the system of Crown Grants.1137 Connected with a survey of Lagos, the plan would have created permits to occupy and improve Crown Land in the form of 999 year leases.1138

Colonial legislation in Lagos could affect land tenure even when its direct object did not concern real property. Ordinance #3 of 1863 imported the law in force in England, including its common law. The Supreme Court Ordinance (1876) updated this importation, though section 19 allowed the court to enforce native customs, specifically in the case of real property. The case of the Marriage Ordinance (1884) has been much discussed. It, and the legal decisions that flowed from it, form an excellent example of how colonial legislation, courts, Christianity, and the rising value of urban land combined to shape and perpetuate contested claims to land in Lagos. Section

1132 Ajibola & another v. Ajibola (1947), 18 N.L.R. 125
1133 WALC, Correspondence, p. 225
1134 WALC, Correspondence, p. 225
1135 Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), 10 N.L.R. 36
1136 Mann (2007), p. 49
1137 WALC, Correspondence, p. 161
1138 WALC, Correspondence, p. 225
39 of the Ordinance declared that, if an African contracted a Christian marriage that had been validated by the Ordinance, his property on intestacy would descend according to English law. In Cole v. Cole (1898), A.B. Cole, the brother of John William Cole, who had left Lagos in 1864 for Sierra Leone, where he married Mary J. Cole, sued to be declared the customary heir of John Cole’s property and customary heir for his lunatic son, Alfred Cole. The assessors had been dismissed in the case, because the defendant believed they had been bribed. Justice Branford decided the case not on the basis of the Marriage Ordinance, but because he believed the enforcement of native custom in the case would be contrary to the principles of justice, equity and good conscience, choosing to apply the law in force in England in 1874, making Alfred Cole the heir but granting a one third dower to Mary Cole. Though the decision was based on the repugnancy clause, the case became a precedent by which the descendants of Africans who had been married according to Christian rights could alternately claim – if it benefited them – that their own circumstances were on all fours with those of the Coles, or if it did not, that their situation was somehow distinguished from it on some point of fact or law.

Cole v. Cole (1898) could be invoked to cover a wide range of marital circumstances. Asiata v. Goncallo (1900) asked the court to consider the case of Elise, a Yoruba former slave who had been married in Brazil by both Christian and Muslim rights. His second marriage in Lagos had been according to Muslim law, but the lower court in the case had applied the decision of Cole v. Cole (1898) and invalidated it. The appeal court decided that, since Lagos was not a Christian country, and since Elise was clearly a “bona fide” Muslim who had taken a Christian marriage in form only, he was entitled to take more wives and his second marriage was valid. Under Muslim law, then, his children were entitled to equal shares of his property. What is further interesting about this case is that it is one of the rare examples in the Nigeria Law Reports in which the customary law enforced in Lagos was not some interpretation of Yoruba custom, but rather a form of Islamic law. In Adegbola v. Johnson & Lawanson (1921), the court considered the case of Harry Johnson, who had married Oniketan according to Yoruba rites, but had been seized as a slave and taken to the West Indies, where he lived for forty years. While there, he became a Roman Catholic, and married Marry Johnson. He eventually returned

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1139 Cole v. Cole (1898), 1 N.L.R 15
1140 Payne v. Cole (1898), 1 N.L.R 24
1141 Asiata v. Goncallo (1900), 1 N.L.R. 41
1142 Asiata v. Goncallo (1900), 1 N.L.R. 43
1143 Adegbola v. Johnson & Lawanson (1921), 3 N.L.R. 81
to Lagos, and purchased land there in 1876. He died intestate in 1900, and when Mary died childless in 1918, she left it to the first defendant. Adegbola, Johnson’s daughter by Oniketan, claimed that she had succeeded to the property on his intestacy. Justice Combe found that no law prohibiting the already-married from taking a second Christian marriage had been passed until 1884, and so the decision of Cole v. Cole (1898) demanded that English law be applied to the case. Frederick Haastrup Sr., otherwise known as Kumoku, the former Owa of Ilesha, was married c. 1848 in Sierra Leone according to Christian rites to Christiana Fagumell, and had two children by this marriage – Sally Tomas, the Princess Adenibi of Ilesha, and Frederick Haastrup Jr. On returning to Nigeria, he took an additional fifty wives by native custom; in 1927, eleven children from these marriages survived. In Haastrup v. Coker (1927) the court declared that, even though Haastrup Sr. was not a Christian, his marriage had been according to Christian rites, and so on his intestacy in 1901 the laws of England applied. In The Administrator-General v. Egbuna & ors. (1945), Justice Ames held that, though the Marriage Ordinance applied only to the Colony, the decision in Cole v. Cole (1898) considered the general principles of application of Native Law and Custom, and could therefore be followed in the rest of Southern Nigeria.\(^\text{1144}\)

The interpretations given to both the Ordinance and the Cole decision showed considerable ingenuity on the part of litigants. In Fowler v. Martins (1924)\(^\text{1145}\), Emily Folwer’s uncle had acquired land freehold in Lagos and died intestate in 1873. The land had passed by English law to his son, on whose death the same year his mother took possession, leaving a will that devised the property away from Emily. While the lower court found that the Marriage Ordinance applied, and thus her claim failed, on appeal she argued that Section 39 of the ordinance could not apply to the case, since the marriage had already been valid prior to the ordinance, and had not been “validated” by it. Chief Justice Combe agreed, and allowed her appeal. The case was upheld on appeal to the Privy Council.\(^\text{1146}\) In Smith & Smith v. Smith (1924)\(^\text{1147}\), Justice van der Meulen held that the Cole v. Cole (1898) decision was not a strict rule. While a Christian marriage created the “presumption” that the intestate wished other aspects of his life to be guided by English law and custom, it was not “conclusive proof.” In the case itself, the parties had treated the land as if it were family property from 1917 until 1922, when

\(^{1144}\) The Administrator-General v. Egbuna & ors. (1945), 18 N.L.R. 1

\(^{1145}\) Fowler v. Martins (1924) 5 N.L.R. 43

\(^{1146}\) Martins v. Fowler (1926) 7 N.L.R. 8

\(^{1147}\) Smith & Smith v. Smith (1924), 5 N.L.R. 102
one member of the family wished to mortgage it and the rest of the family refused. He then claimed in court that as the only son of his father, he had succeeded on the latter’s intestacy according to English law. Van der Meulen found that to apply English law would be unjust, and since the land could not be partitioned, ordered a sale. The widow of Alfred Davies, who would not have been entitled to any share of his property under Yoruba law, claimed in Sogunro-Davies v. Sogunro, Sogunro & Sogunro (1929)\(^\text{1148}\) that she was entitled to his share of the family property as a result of the Marriage Ordinance. Though Justice Berkeley found her argument “ingenious,” he decided that Davies’ did not hold an undivided share that she could inherit.

Pawning of both farms and children existed prior to the cession and introduction of Crown Grants, but was generally perpetually redeemable.\(^\text{1149}\) Attachment of land for trading debts began in Sierra Leone during the 1820s, and this system was brought to Lagos even before the expulsion of Kosoko – Mann (2007) provides an example from the 1850s.\(^\text{1150}\) This was not a practice confined to borrowing from Europeans and Saros; by the 1860s, pledging of land to local moneylenders for small loans had become widespread.\(^\text{1151}\) In 1912, the Commissioner of Lands argued that the African population of Lagos preferred to borrow from other Africans, rather than Europeans, even if this meant that they would pay a much higher interest rate.\(^\text{1152}\) He identified the moneylending class as the “lawyers and so on” – the class of educated Africans that came to be seen by colonial officials as among the principal villains in the destruction of communal tenure. The infinite redemption period for a pledge (which precluded sale in the case of default) waned. Pawning in the Protectorate was still considered redeemable at any time, but would become the creditor’s property on foreclosure, and was usually followed by sale at public auction.\(^\text{1153}\) In 1864, a Petty Debt Court was established with the capacity to issue writs of *fieri facias*.\(^\text{1154}\) This not only facilitated the commercialization of land, but also could weaken the rights of other claimants. The Chief Justice told the WALC that, in cases of execution of writs of *fi fa*, interpleader was “very common.”\(^\text{1155}\) By 1912, many farmers within a few miles of Lagos were having difficulty repaying their loans. Instead, they would bring all their cocoa to a large

\(^{1148}\) Sogunro-Davies v. Sogunro, Sogunro & Sogunro (1929), 9 N.L.R. 80

\(^{1149}\) WALC, Correspondence, p. 231

\(^{1150}\) Mann (2007), p. 45

\(^{1151}\) Mann (2007), p. 45

\(^{1152}\) WALC, Minutes, p. 127

\(^{1153}\) WALC, Correspondence, p. 226

\(^{1154}\) Mann (2007), p. 46

\(^{1155}\) WALC, Minutes, p. 517
farmer, who would give them a “sort of wage.”¹¹⁵⁶ This did not, however, concentrate land in the hands of moneylenders. Generally, they would not keep the lands acquired through foreclosure.¹¹⁵⁷ Charles Cameron Cole, an Egba auctioneer told Buchanan-Smith in 1912 that land held under both Crown Grants and “native tenure” were auctioned on compulsory foreclosure. In Lagos and Ebute Metta, almost all land sold in this way was held under Crown Grant, but “up-country” it was all held under native tenure. Sales there were due, he argued, to moneylenders who charged such high interest that the borrower almost always lost his land. “Most members of the moneyed class lend money,” he observed.¹¹⁵⁸

During the latter half of the nineteenth century, Mann (2007) argues that the meaning of land changed in Lagos. It became both a source of rental income for its owners and a speculative investment for elites. Demand for rental accommodation came initially from Europeans and especially the colonial government, but at the end of the century, as thousands of migrants flooded into the city, renting was an attractive alternative to obtaining land through a patron, with all the reciprocal obligations it entailed.¹¹⁵⁹ By 1880, the population of Lagos was more than 35,000 and consisted mostly of assimilated Yoruba.¹¹⁶⁰ Speculative investment was the provision of merchants, moneylenders, and the nascent professional class of lawyers and “colonial servants” in Lagos.¹¹⁶¹ They did not confine these activities to Lagos; the “barrister class,” as the disapproving colonial officials called it, had representatives at Onitsha and Warri, and attempted to purchase land there as well.¹¹⁶² Buchanan-Smith’s 1912 report provided multiple examples from the surrounding country in which land had been alienated to Lagos men. Around the railroad through Awori territory, a considerable amount of land had been lost through mortgage and subsequent foreclosure.¹¹⁶³ The Bale of Ojuwoye village added that, while sale and pawnning were forbidden, land had in fact been sold to Lagos men, but in secret.¹¹⁶⁴ F.S. James believed that “all the scallywags from Sierra Leone and Lagos,” had gone to Onitsha before the government was aware of the potential problem and secured pieces of land from the

¹¹⁵⁶ WALC, Minutes, p. 132
¹¹⁵⁷ WALC, Correspondence, p. 238
¹¹⁵⁸ WALC, Correspondence, p. 241
¹¹⁵⁹ Mann (2007), p. 51
¹¹⁶⁰ Mann (1991a), p. ???
¹¹⁶¹ Mann (2007), p. 55
¹¹⁶² WALC, Minutes, p. 147
¹¹⁶³ WALC, Correspondence, p. 226
¹¹⁶⁴ WALC, Correspondence, p. 234
people, squatting and marrying Onitsha women. The problem had only come to the attention of the Government when one attempted to sell his plot to a European.\textsuperscript{1165} When Thompson told the WALC that sale was becoming an established custom in Lagos and Abeokuta, he argued that this was financed by “a very small clique of what we call out in the country ‘savez book men.’”\textsuperscript{1166}

In 1908, Justice Speed wrote that “the institution of communal ownership has been dead for many years and the institution of family ownership is a dying institution.”\textsuperscript{1167} Two decades later, Justice Tew wrote that the conflict of native and English law had become “very acute,” and he expected that legislation would soon so away with the former.\textsuperscript{1168} Despite many premature obituaries, and notwithstanding the multiple changes introduced by colonial rule, family property in Lagos was “tenacious”; Buchanan-Smith noted that one family had recently (in 1912) petitioned the Supreme Court to set aside a Crown Grant.\textsuperscript{1169} The rules of family property were, however, modified by the ongoing claims and negotiations made by Lagosians throughout the nineteenth and early twentieth centuries. In areas where family property prevailed, sale was recognized with consent of the family. The Supreme Court played a major role in the dual preservation and modification of family property. The legal definition of a Yoruba family house was established as an Obiter Dictum by Justice Carey in 1938.\textsuperscript{1170} Buchanan-Smith argued that the court was “always ready” to set aside sales that had not been consented to by the whole family.\textsuperscript{1171}

In Lewis & ors. v. Bankole & ors. (1909),\textsuperscript{1172} the court considered the lands of Chief Mabinuori, a man of considerable “wealth, influence, and position” who had acquired several properties between the Marina and Broad street, even prior to Akitoye’s grants. He had obtained Crown Grants for this land, which had been treated as his personal property. After his death in 1874, his children had occupied the houses originally allotted to them, but in 1905 a group of his grandchildren sought a declaration that the land was family property. In the lower court, Justice Speed refused to grant such a declaration which would “throw the property into the melting pot of an acrimonious family feud.” On appeal, Justice Osborne noted that the case originally

\begin{footnotes}
\footnotetext[1165]{WALC, Minutes, p. 232-233}
\footnotetext[1166]{WALC, Minutes, p. 243}
\footnotetext[1167]{Lewis & ors. v. Bankole & ors. (1909), 1 N.L.R. 81}
\footnotetext[1168]{Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), 10 N.L.R. 36}
\footnotetext[1169]{WALC, Correspondence, p. 223}
\footnotetext[1170]{Coker v. Coker, Coker, and Goyea (1938), 14 N.L.R. 83}
\footnotetext[1171]{WALC, Correspondence, p. 226}
\footnotetext[1172]{Lewis & ors. v. Bankole & ors. (1909), 1 N.L.R. 81}
\end{footnotes}
concerned only the headship of the family, but the land had been included after the plaintiffs declined to accept the advice of court-appointed chiefs to settle the matter. After Mabinuori’s successor Fagbemi died in 1881, Ben Dawodu had become the most influential member of the household, though he was not its official head. It is clear from the judgment that the rights exercised over the property clearly fluctuated according to the power of individual members within the household. Dawodu had originally collected rents for leases made to Europeans in his own name, but after 1898 agreed to divide them with the rest of the family. A portion of the land had been sold to cover family expenses.

The white-cap chiefs who served as assessors claimed that they would have settled the case by looking at the compound in question. The shares allotted to each of the head’s children ideally would be made equal. In Miller Bros v. Ayeni (1924)\(^{1173}\), the land of a man who had purchased it by conveyance in 1899 was found to become family land on his death intestate, such that his heirs were not in the position of tenants in common under English law and could not alienate their own interests without the family’s consent. The court in the Bankole case solidified this hypothetical into a declaration that the branches of a founder’s family were represented “per stirpes.” Further, this case loudly established the precedent that land held under individual tenure on the death of the owner became family property held jointly by all heirs – and implication that would shape claims to land in Lagos well into the 1950s.

Inheritance by sons rather than brothers was another innovation that followed the advent of British influence.\(^{1174}\) This would especially possible in cases where the land had been purchased.\(^{1175}\) In Gbadamosi Ayorinde v. Asiatu & Ors (1899), the court declared that all property descending to the plaintiff, while valid by custom, was repugnant to justice.\(^{1176}\) In Lopez & ors v. Lopez & ors (1924)\(^{1177}\), the female descendants of Anthony Lopez, and owner in fee simple who had died in 1875, sued for a partition of the land. On his death, both the plaintiffs and (male) defendants had continued to live there, and treated the land as family property. Though there existed a previous precedent – Omoniregun v. Sadatu (1888) – in which Justice Smalman-Smith had recorded the opinions of the assessors that women could not inherit, and thus only had occupancy rights over the family land, the case was remitted to the lower court so

\(^{1173}\) Miller Bros v. Ayeni (1924), 5 N.L.R. 40
\(^{1174}\) WALC, Minutes. p. 526
\(^{1175}\) WALC, Correspondence, p. 227
\(^{1176}\) WALC, Minutes. p. 526
\(^{1177}\) Lopez & ors v. Lopez & ors (1924), 5 N.L.R. 47
that more evidence could be collected on the relevant Yoruba customs. In the end, the claim failed not on grounds of custom, but because Justice Pennington did not believe that the plaintiffs had shown sufficient grounds for partition.

The court upheld this principle in Caulcrick v. Harding & Labinjoh (1926)\(^{1178}\), refusing to divide the property of Thomas Labinjoh, who had died intestate in 1907. In Ogunmefun v. Ogunmefun & ors (1931)\(^{1179}\), the court found that the land of Thomas William Davies, who died intestate in 1906, had not been divided, except for one piece that had been alienated by his son the same year, without consent of the family but also without objection; the result of the decision was that, whereas his son had been able to alienate his share because he got away with it, his daughter who had willed away here share could not. In Adagun v. Fagbola & Scottish Nigerian Co. (1932)\(^{1180}\) it was established that a family member who mortgaged his share without having the right to do so thereby forfeited it. The rules governing the inheritance of family land by the half-blood were set down by the court in Adedoyin v. Simeon, Simeon & Simeon (1928)\(^{1181}\).

In Andre v. Agbebi & Johnson (1931)\(^{1182}\), Justice Webber simply declared that it was futile to attempt to discover the native law and custom for an intestate who had left surviving a uterine brother and half-sister, and resorted to a 50-50 division on grounds of “justice, equity and good conscience.” In Balogun & Scottish Nigeria Mortgage and Trust Co. Ltd. v. Oshodi (1929), Justice Webber wrote that the “chief characteristic feature of native law is its flexibility – one incident of land tenure after another disappears as the times change – but the most important incident of tenure which has crept in and become firmly established as a rule of native law is alienation of land.”

By the twentieth century, the position of the Eleko had been greatly weakened, and the Idejos had begun to reassert their rights over the lands of Lagos. As they did so, the questions of ownership of the land of Lagos and the proper interpretation of the Treaty of Cession were reopened and used by the Idejos to ground their own claims. Just how far the balance of power had turned was revealed during the collection of evidence by Buchanan-Smith in 1912. The Eleko was interrupted frequently by the White-Capped Chiefs. A copy of MaCaulay’s (1912) speech was presented, out of which a hand-written note fell out, purporting to be a statement of

\(^{1178}\) Caulcrick v. Harding & Labinjoh (1926), 7 N.L.R. 48

\(^{1179}\) Ogunmefun v. Ogunmefun & ors (1931), 10 N.L.R. 82

\(^{1180}\) Adagun v. Fagbola & Scottish Nigerian Co. (1932), 10 N.L.R. 110

\(^{1181}\) Adedoyin v. Simeon, Simeon & Simeon (1928), 9 N.L.R. 76

\(^{1182}\) In Andre v. Agbebi & Johnson (1931), 10. N.L.R. 79
the Eleko in which he claimed that the basis of tenure in Lagos was family and individual ownership; the Idejos would not permit this to be treated as evidence. 1183

The question of the Treaty of Cession arose early in the twentieth century in two major cases concerning compensation for land taken by the Crown – The Attorney-General v. John Holt & Co. & ors. (1910), 1184 otherwise known as the “Lagos foreshore” case, and Amodu Tijani v. Secretary, Southern Provinces (1921), the “Oluwa land case”. 1185 The Government itself launched the foreshore case, claiming ownership of land between a road that had been built in 1907 and the waterside; the shorefront companies were claiming compensation for the fact that their sites had been cut off from the water. Much of the case centered on accretion and riparian rights, but by the time the case reached the Privy Council, it had resulted in a declaration that all land in Lagos had been ceded by Docemo to the Crown. The defendants entered several pieces of evidence to counter the “plain and unambiguous” wording of the treaty, including Docemo’s proclamation the day after it was signed and Freeman’s assurances to the Idejos that they were the rightful possessors of their lands. The three plots in question were at Olowogbowo, and had been unoccupied until 1841, when they were cleared by Oshodi, one of Kosoko’s war chiefs, and occupied by them until 1851. The first was originally owned by the African trader Samuel B. Williams, who had received a Crown Grant in 1864 after twelve years of occupation. The second had been obtained in 1861 by Harry Johnson, another African trader, on a grant from Docemo. The third had been occupied by the Rev. James White in 1853, who received a grant from Docemo in 1861, which he had “renewed” in 1864 as a Crown Grant. All three plots had changed hands multiple times before John Holt & Co. acquired them in 1899. Osborne held in the lower court that the land was vested in the Crown, but subject to the legal rights of the defendants as riparian owners. Both parties appealed. It was on then that the defendants introduced the contention that the land was owned by the Idejos and not Docemo at the time of the Cession. On appeal to the Privy Council, whose judgment was delivered in 1915 by Shaw, it was established that the 1861 treaty did not exclude property from the grant, but that the Crown was obligated to respect private property rights.

The government seized on the first decision in the foreshore case to extend their control over lands in Lagos. A public notice in the Gazette declared that no rights acquired since the Full

1183 WALC, Correspondence, p. 180
1185 Amodu Tijani v. Secretary, Southern Provinces (1921), 3 N.L.R. 21
Court’s decision except from the government were to be recognized, while those acquired between the cession and the decision would be considered on their merits.\textsuperscript{1186} In the 1911 report of the Lands Department, this position was clarified; the government did not intend to “insist on its full legal rights,” but rather wished to check speculative buying and forestall the “extravagant claims to compensation” on neglected plots, where the ability to cut palm nuts, hastily planted cassava plots, and the presence of mud fish were advanced as evidence of occupation.\textsuperscript{1187} Macaulay (1912) claimed to have spoken to the Attorney-General while the case was before the Divisional Court, and received his assurance that the Government did not claim the “soil of the Island of Lagos.”\textsuperscript{1188} After the judgment of the appeal court, however, he stated that “we have got judgment and we are going to stick to it.”\textsuperscript{1189} There is some indication, then, that Government policy was shaped by what advantages the Crown itself could gain by negotiating access to property through the legal system. Macaulay’s (1912) view was that, for the first fifty years after the cession, “the Government never once claimed the ownership of the soil of the Island of Lagos under and by virtue of that treaty.”\textsuperscript{1190} Similarly, in the case of Onisiwo v. The Attorney General (1912)\textsuperscript{1191}, the Attorney-General claimed that, though the Crown was obligated to respect private property rights, the Treaty of Cession was an international treaty and thus the obligations it imposed could not be enforced on the Crown by any local court. Chief Justice Osborne dismissed the Crown’s contentions, arguing that it had affirmed its obligations to respect private property rights by fifty years of policy, including the appointment of the Lands Commissioners and the compensation of owners for lands acquired; it could not suddenly deny these rights a half century later.

In Amodu Tijani v. Secretary, Southern Provinces (1921), the Oluwa sued for compensation over land that had been taken by the Government at Apapa. Tijani claimed that he was the absolute owner of the land, with the right to sell without reference to the occupiers, and pocket the proceeds. Chief Justice Speed in the divisional court saw this contention as “utterly unworthy of credence.” He also argued that, since the King of Benin was considered owner of all the lands in Benin, and that the Elekos until Akitoye recognized the Oba’s sovereignty, it was

\textsuperscript{1186} Macaulay (1912), p, 2
\textsuperscript{1187} Macaulay (1912), p, 2
\textsuperscript{1188} Macaulay (1912), p, 10
\textsuperscript{1189} Macaulay (1912), p, 10
\textsuperscript{1190} Macaulay (1912), p. 13
\textsuperscript{1191} Onisiwo v. The Attorney General (1912), 2 N.L.R. 77
“impossible to resist” that it was the Oba, not the Idejos, who originally owned the land. He found that what the Oluwa possessed was a “seigniorial right,” and not ownership. Tijani appealed from this decision, arguing that by 1861 the Binis had abandoned their claims, and that the Idejos owned lands as family heads, not as chiefs. Shyngle, his lawyer, argued that the facts here were the same as in the Onisiwo case, in which the rights of a white-cap chief had been upheld. Justice Ross, however, found that, had evidence relating to the Benin conquest been introduced in the Onisiwo case, the decision would have changed. Justice Webber added that, in Ajose v. Efunde & ors (1892), Smalman-Smith had found that chiefs did not have “absolute ownership,” while kings held a “national proprietary right.” The Oluwa appealed from this decision to the Privy Council, whose judgment was read by Haldane in 1921. The law lords found that the cession had vested the “radical or ultimate title” to the land in the Crown, which they took as the judgment of the foreshore case. Beneficial ownership – such as the rights of the Onisiwo that had been recognized in that case – were not, however, ceded. These were so extensive as to “reduce any radical right in the sovereign to one which only extends to comparatively limited rights of administrative interference.” Though the Oluwa did not own the land personally, he was entitled to compensation for its full ownership, the payment of which was to be distributed under direction of the Native Council. Emboldened by this decision, he claimed compensation for land taken in 1913 under the Public Lands Ordinance, which the Crown argued was unoccupied. Though the lower court1192 agreed that land from which palm oil was collected could not be unoccupied, he appealed that the lower court had failed to compensate him for the tributary rights established in the Privy Council judgment. Chief Justice Combe did not agree with the Oluwa on this interpretation of Haldane’s decision.

4f. Slavery

The most studied feature of agrarian change during this period has been the intensification of the use of slaves as domestics, as traders, in ritual functions and as agricultural laborers that followed on the decline of the market for human exports. Thus, as intimately related parts of the production process, slaves and land cannot be discussed in isolation from each other. Further, as Mann (2007) has pointed out access to land opens opportunities for slaves to redefine

1192 Amodu Tijani v. Secretary, Southern Provinces (1923), 4 N.L.R. 18
their relationships with their masters, while the power to control it enables masters to discipline and control their labor force.\textsuperscript{1193} In her particular study, changes in land tenure ‘lay at the heart’ of emancipation in Lagos.\textsuperscript{1194} Nunn (2005) has argued that over the period 1400-1913, 2,326,526 slaves were shipped from what is today Nigeria – 13% of the African total and more than from any other modern African nation.\textsuperscript{1195} Certain ethnic groups were overrepresented within the slave trade; most notably, Northrup (1978) estimates that 60% of slaves taken from the Bight of Biafra were Igbo.\textsuperscript{1196} This section, then, discusses the importance of changes to slavery in this period for the emergence of private property rights in land.

Agiri (1981) notes that the Yoruba word “eru” encompassed several concepts of servile status, including the privileged palace slaves and those devoted to worship, laborers in agricultural production and trade, freemen clients of chiefs and kings, slaves bought by commoners and childless women, and pawns. Oyo, Ibadan, Egba and other leaders acquired slaves through war. Soldiers too attempted to take as many captives as they could; for slaves this became a way to purchase their manumission. Slaves continued to be used in other pursuits, notably on the large farms of chiefs. The “average Yoruba farmer” used slaves as well, and the scale of slavery expanded to the point that loyalty had to be secured through oathing and the prospects of promotion and material improvement. Because of the revolt at Oyo, Yoruba were initially wary of buying Hausa slaves. However, the threat of Muslim expansion was largely contained by 1855, and groups such as the Egba began to purchase Muslim slaves in large numbers. Iliffe’s (1983) study of poverty in Yorubaland is interesting for what it reveals about the role of slavery. Poverty was structural, and "less often family poverty than the result of a lack of family." Warfare was the only source of "conjunctural" poverty, as famine was uncommon and unemployment was confined to Lagos. These wars prompted many to sell themselves, their children or their relatives into slavery or pawnship. The indebted and inhabitants of weaker towns preyed on by larger ones are also to be considered "poor." Slaves, however, were not for the most part poor. Slavery "absorbed' individuals who would otherwise have been poor, while slaves were often well cared-for by their masters or alternatively feared by them.

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\textsuperscript{1193} Mann (2007), p. 2 \\
\textsuperscript{1194} Mann (2007), p. 2 \\
\textsuperscript{1195} Nunn (2005), p. 8 \\
\textsuperscript{1196} Northrup (1977), p. 62
\end{flushleft}
The most thorough study of Yoruba slavery is Oroge’s (1971) sadly unpublished PhD dissertation The institution of slavery in Yorubaland with particular reference to the nineteenth century. According to him, three main systems of labor existed in Yorubaland - family, cooperative, and the large households of chiefs. The latter were the "economic nerve-centres of Yorubaland." Every war chief was "able to fight, farm, and trade." After 1850, military success saw the number of such households increase most greatly at Ibadan; 104 were established during the 1800s, holding perhaps 52000 slaves. Some chiefs had several hundred slaves on their farms. The number of slaves in Ibadan was so large in 1859 that a moratorium was placed on war. In Abeokuta, "large" households were those with more than 100 slaves. Among the Ijebu, the Awujale (king) had more slaves than any one war chief, but the Ijebu depended on slave labor as much as the Egba. Most Ijebu slaves were Hausa. In Ondo, the average "large" household had 100 slaves. Intermediate households also owned small numbers of slaves. Use of slaves in farming was long-established, but the response to legitimate commerce occurred principally through the expansion of slavery. Slaves lived in "fortified hamlets" built by their masters. Usually one was appointed as the overseer. Some tasks, like cattle-raising, were left exclusively to slaves, who also had considerable time for their own pursuits; they often worked from dawn until 11 AM on their master's land, and the rest for themselves (though Christian and Muslim owners were more harsh in this regard).1197 The constant mention of the large slaveholdings of chiefs in his work necessarily implies they had landholdings large enough to support these labor forces. In responding to the export trade, some chiefs farmed "larger piece(s) of ground." Farms were centered around fortified towns such as Abeokuta, but could stretch out for thirty miles, with men traveling 4 days to farm. After the CMS left Abeokuta, two chiefs appropriated the land to establish plantations. The Ataoja of Osogbo had least 6 plantations, each with 80 slaves or more. Some overseer slaves successfully pawned their masters' land without their knowledge. Slaves were allotted plots adjacent to those of their masters, and the word used to describe these - "abose" - was also used to describe those given by fathers to sons.

The early settlers of Awkun, in Ijebu – Moloda, a prince of Ijebu Ode, as well as Remardegun, Igbon, and Agamoyon – had each brought with them their slaves and servants.1198 Slaves were used extensively throughout the Oyo economy; Law (1977) notes that one observer

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1197 [Discuss the original CO 147 source for this, and Agiri’s critique – point out how well-traveled this quote is.]
1198 WALC, Correspondence, p. 183
in 1830 estimated that two thirds of the population in the capital were slaves. Many of these were Hausa, and employed in a variety of tasks, administrative and productive, skilled and agricultural. Though the Alafin and the Oyo state gained most revenue through trade and its taxation, the maintenance of a standing army and administration required food, and thus “a substantial force of agricultural slaves to produce a surplus of foodstuffs for consumption.” Agiri (1974) argues that the Egba – and especially Egba chiefs – used slaves in greater numbers as a result of the legitimate commerce.\footnote{Agiri (1974), p. ???} By 1880, some chiefs owned hundreds of slaves, which were acquired not only through war, but increasingly through purchase. Common to Awori, Egba and Ijebu Remo was the “relaxed attitude of masters to their slaves,” who were permitted to farm and earn income on their own accounts; Agiri (1974) argues this was intended to make them more “efficient and willing”. As Britain began to penetrate into the interior during the 1890s, many – though not all – slaves deserted their masters. Among the Jekri, only the chiefs and their families could be considered free by the end of the century.\footnote{Granville (1898), p. 118} The head of the Jekri village was usually also its richest member.\footnote{Granville (1898), p. 117} For Bonny, Hargreaves (1987) notes that slaves and people of slave origin, mainly Igbo and Ibibio, came to form the majority of the population. Slaves were often kept "up country" on plantations owned by trading Houses. Agricultural slaves had social status inferior to that of trade slaves, whose opportunities to gain positions of power increased.

Derrick (1975) has shown that, as late as the 1970s, the “residue of slavery has lasted longer than others in Iboland, and is far from dead”.\footnote{Granville (1898), p. 118} The descendents of ritual slaves, the “osu,” face pervasive economic and social discrimination, though interestingly descendents of ordinary slaves (“ohu” or “oru”) do not.\footnote{Derrick (1975), p. 92} Despite the near complete political decentralization that characterized much of pre-colonial southeastern Nigeria, what political authorities did exist might still amass large numbers of slaves. When the father of the Osang Anuk of Abompong in Ogoja died, he had thirty slaves.\footnote{Derrick (1975), p. 92} Northrup (1978) divides the use of slaves in Eastern Nigeria into three forms. The first form, in the coastal zone, was that of imported trading slaves such as oarmen. This mangrove swamps of the area limited the land available for farming. Secondly, the oil palm belt had the highest population densities in West Africa. Outside of the inland trading

\footnote{Derrick (1975), p. 92} Haig, “Supplementary Report on the Boki of Ijom Division, Ogoja Province, Nigeria, with Special Reference to the Abo Clan,” (1930), p. 33
communities, there was little increase in the use of slaves, who were assimilated quickly into their owners' families. Rather than intensifying the use of slaves to produce palm oil, labor was diverted from food production. North of the oil palm belt and east of the Cross river, the savannah and woodlands became a supplier of food to the other zones and used slave labor extensively. Among the Northeastern Igbo, though slaves had their own dwellings and farm plots, they had no social mobility and here "one finds the closest approximation of New World plantation slavery." Large slave villages existed north of Enugu, but not south. Northrup (1981) argues that in the Palm Oil belt, slavery did not increase due to high population densities, while in the less-populated northern and northeastern Igbo regions, slavery expanded. Here, slaves had very few social rights; the institution was viewed in mainly economic terms. Slaves in all regions were seen as capital, which could store value, reproduce, and even be destroyed at funerals as a demonstration of wealth. Social mobility was rapid in the Niger Delta; one often-cited example is the departure of Jaja, a slave who headed Bonny’s most successful trading house, to found his own town at Opobo in 1870. Along the coast and the Niger acquiring slaves became a signifier of wealth and power; during the 1840s, as the price of slaves fell, even slaves acquired their own slaves. Slaves were often encouraged by their masters, and allowed to trade on commission or for themselves. In New Calabar, the “canoe houses” retained kin-based idioms, even though they were no longer defined by blood relationships. Slaves were incorporated into these, and it was in fact a crime to “refer to an acculturated slave as a slave in public.” In Calabar, assimilation was not as complete, as slaves were barred from the highest offices. In densely populated regions, full assimilation took several generations.

Both Oriji and Martin have made substantial contributions to the history of the Ngwa Igbo. Oriji (1982 and 1983) argues that the Aro expansion, facilitated by the rise of Bonny, was extended into the Ngwaland through commercial links with the Okonko – a secret society “derived from the Ekpe society of the Efik-Ibibio” which had diffused via Aro-Chukwu during the 18th century. Ranking Okonko members began to perform functions that were previously the domain of traditional authorities – judicial activities, enforcing credit contracts, securing roads, and settling disputes. In the nineteenth century, though wealthier individuals hired domestic slaves to aid in the production of palm oil, “the typical production unit consisted of a man, his wives and children.” Recaptured Igbo slaves came predominantly from central and northern Igbo communities with high population densities, and not from within the palm belt areas where
they were needed for palm commerce and food production. Those who bought slaves did so from the Okonko, who were also able to charge tolls on those who used the same routes to ship palm oil as had been previously used for slaves. Perhaps three quarters of the palm oil exported at Bonny came from the Ngwa region. Largely responding to Northrup’s suggestion that allocation of trees was intended to suit egalitarian purposes, he argues that the palm oil trade did not alter traditional land administration; adult males were allowed to harvest from trees near their houses and, on specified days, those on communal land, while authority figures were also had rights over those standing on “ancestral land,” giving them a substantial advantage. They began to usurp powers of the traditional Ngwa authorities, including dispute settlement. Individual males could harvest the trees near their houses, and could also harvest those on communal land on specified days. Small-scale farmers had focused primarily on food production during the 1700s. The palm oil trade reinforced the intra-household division of labor in which men harvested the fruit, which was later processed by women. The labor demands of palm oil production accentuated social differentiation. Heads of lineages, villages and towns were the major producers; though they did not establish plantations, they used their many wives and slaves as well as the tributary labor to which they were entitled to harvest the palms on ancestral land.

Susan Martin (1985, 1988, and 1995) has responded to Oriji, arguing that the slave trade brought with it imported crops and tools. Many of these – notably the cocoyam – became “women’s crops,” and the increased value of women’s work was reflected in a declining proportion of women in Biafran slave exports. Since women’s work in processing these fruit was more labor-intensive than men’s effort in gathering it, Ngwa household heads invested not in (male) slaves, but in women as wives. Crops defined as 'male', even when tended by women, were owned by the man on whose land they were grown. Women also had few rights over their children. Women were married outside of their compounds (or even of their villages) and had little power in village affairs. The use of wives rather than slaves contrasts with labor-scarce areas such as Ahoada, Degema and parts of the Cross River, where slaves were imported in large quantities. Co-operative labor occurred mainly in the household and not at the village level; even within the household this was limited. Since senior men acquired multiple wives, their control over junior men was enhanced. Secret societies of traders (Okonko), which had emerged during the slave trade, were not thus able to use their access to slave markets to gain an advantage over
other farmers. Women had initially gathered windfall fruits, but when a market for palm oil developed, men began preserving oil palms when clearing land (though they did not plant them) and climbing the trees, which established their rights over the fruit. Contra Northrup, Martin (1995) argues that many of the same trading networks were used to transport palm oil as had been used for slaves, a fact that benefited Okonko members, but that these were disrupted after 1860 by wars and the kernel trade. Rather, it was the existing ofo-holders who used their “traditional” land rights to extend their ownership over oil palms, and thus their economic power. The Ezi was the basic unit of common ownership of land and palms; these were allocated by the male Ezi head to the junior household heads, who worked for him one day in four. Unmarried men and other junior males worked for the household heads. During the early 1900s, family farmland was apportioned each year by the ofo-holder. Though the slave trade had opened up opportunities for kidnappers and traders, usually members of the Okonko secret society, the exhaustion of virgin forest through southward migration prevented those who were not ofo-holders from gaining access to land to build slave plantations. While no special rules controlled ownership of oil palms before the export trade developed, the ofo-holders succeeded in establishing ownership of palms on their land, compound land, and previous lineage settlement land. They also regulated harvesting.

Ohadike (1994) argues that, among the Western Igbo, slaves were not permitted to own land, and their owners often employed them as sharecroppers. With the eventual abolition of slavery under colonial rule, some slaves chose desertion (for example, half the population of Abala left to found a new settlement), while some "ugwule" slave villages were converted into autonomous settlements. In the northern Igbo hinterland, slaves lived in separate slave villages, and could not improve their status. The Nike Igbo slave villages are the best-known example, and the North-Eastern Igbo were also notable for this. Slaves were also used to conquer and occupy frontier lands.\footnote{Northrup (1978), p. ???} Inhabitants of the Nike village group, immediately northeast of Enugu, served as allies of the Aro during the slave trade.\footnote{Horton (1954), p. 311} Situated next to a “land-starved, over-populated” region, Nike was ideally placed to exchange yams for men.\footnote{Harris, (1942), p. 311-312} The Nike also conquered large tracts of territory, and arranged groups of Ohu slaves around their land like “a

\begin{flushright}
1205 Northrup (1978), p. ???
1206 Horton (1954), p. 311
1207 Harris, (1942), p. 311-312
\end{flushright}
military commander in placing sentries.”

With time, these Ohu settlements grew to become villages; by the 1950s, the largest had more than sixty separate patrilineages. Though Ohu could not pledge or otherwise alienate their land under penalty of eviction, and owner who did not permit his Ohu to lease palms or collect palm nuts was considered “mean.” Their rights were, however, “no more than those of tenants.”

Ohu were used primarily for labor. With the advent of colonial rule, this persisted, though it was slowly replaced by wage work. Owing to their large holdings of fertile land, the Nike freeborn (Amadi) performed only the most skilled tasks themselves, and allowed as much as a third of yam income to be spent on wages. They refused to lease to other groups such as the Ezza, because, in the words of one of Horton’s (1954) respondents, “Ezza people are too good at farming and they would soon get up on us in the market.”

British administration eliminated the ability of the Amadi to evict Ohu, but it could not eliminate the Amadi belief that they were “chattels and not persons, and therefore land cannot properly be alienated to them.”

Harris (1942) notes that the Ibo of Bende division do not have oral traditions of wars or raids for the purpose of enslavement. Rather, sale into slavery was generally a punishment for transgression, including, interestingly “sale, rental or alienation otherwise of communal land by one of its users without the consent of the others of the land-owning group.” Not only does this suggest that sale, though illegal, was attempted prior to British rule, but perhaps that the slavery helped curtail its emergence by providing a punishment. The legacy of kidnapping, however, was deep; even in 1939 children were cautioned to hide when strangers came to visit.

Slaves would be used by a wide number of individuals, including men with small families who required additional farm labor, or by wealthy women who hoped to receive a high bride price for a female slave. In Ozuitem, a slave could never secure manumission by his

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Horton (1954), p. 313
Horton (1956), p. 24
Horton (1954), p. 316
Horton (1954), p. 326
Horton (1954), p. 318
Horton (1954), p. 318
Horton (1954), p. 318
Horton (1954), p. 334
Harris, (1942), p. 40
Harris, (1942), p. 41
Harris, (1942), p. 42
Harris, (1942), p. 45-46
own effort. A slave’s inheritance rights here were the same as the youngest son of his master. Upon marriage, a slave’s master would grant him a tract of land on which he could farm and build a separate compound; he would continue to work on both plots, and – minus a tribute of ten to fifteen yams – keep the output from his own field. A master would represent his slave in land disputes.

Bridges (1938) believed that the scattering of purchased and pledged land in his sole specimen of Ibibio landholding was the result of conditions that were common enough in the old days, when slave trading was still rife. The Ututu and Ihe, the nearest neighbors of the Aro, were “exempted” from their “oppressive treatment,” and in stead encouraged to settle nearby, under Aro protection, so that they could supply the Aro with farm produce while the Aro focused their energies on trading and raiding for slaves.

[In general, this section is lacking a lot of detail about slavery in the Niger Delta and among the Ibibio. Yet another reason to go back to Latham (1973) and Dike (1956)]

In Old Calabar, domestic slavery was already common by 1668. In the Ekpe secret society, which was founded after 1710 and held “religious, judicial, commercial and social” functions, slaves were eligible for the lowest five of nine grades of the society. They were not, however, incorporated within the kinship system. Chief Bassey Duke Ephraim told the WALC that the original owners of the lands of Calabar were the Efik, Abakpa and Qua, who had obtained their rights through “emigration, inter-marriage, purchase, and conquest.” Originally all land belonged to the community, with families holding specific plots. He argued that the sale of land “amongst ourselves” dated back to “time immemorial,” and was not due to foreign influence. Land was sold to obtain currency, goods, and slaves. The Efik of Duke Town

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1220 Harris, (1942), p. 48
1221 Harris, (1942), p. 51
1222 Harris, (1942), p. 52
1223 Harris, (1942), p. 53
1225 Matthews, “Second report on Aro,” p. 9
1226 Latham (1973), p. 99
1227 WALC, Minutes, p. 437
1228 WALC, Minutes, p. 437
1229 WALC, Minutes, p. 437
1230 WALC, Minutes, p. 437
could purchase land from the Quo or Efut, and were able to alienate within their own lifetimes, though on death it became the property of their children.\textsuperscript{1231} Urban land, however, could not be sold or owned individually on the grounds that it belonged to the community.\textsuperscript{1232} Proof of purchase was required for sale of urban land.\textsuperscript{1233}

The population of Duke Town grew from 2000 in 1805 to 6000 in 1845, with “perhaps ten times as many in the farming areas,” due mainly to the settlement of slaves in Akpabuyo, to the east.\textsuperscript{1234} By 1846, Daniell was able to write that there was no slave market held in on the Calabar river, the slave trade having been suppressed over the past decade by “a more just and legitimate commerce”\textsuperscript{1235} had completely superseded it. This did not, however, end the brutality of slavery. Chiefs were generally punished by proxy,\textsuperscript{1236} while on the death of Duke Ephraim, “some hundreds of men, women, and children, were immolated to his manes.”\textsuperscript{1237} Latham (1973) rejects the arguments of other writers that the large influx of slaves was diverted from the slave trade into agriculture; the region lacked both oil palms and the general fertility to be a source of food for Old Calabar. Rather, the slaves may have been stored as potential warriors to increase the power of the wards that owned them. The large population of agricultural slaves produced the political tensions described by Northrup (1981), but they were largely conservative, concerned only with ending arbitrary treatment, not with upward mobility. Several trading slaves, notably in Duke Ward, did seek to increase their status and enter the class of ‘gentlemen’. Wealthy traders helped their slaves and other dependents gain membership in the secret Ekpe Society. Many of the slaves belonging to the lineage of Duke Ephraim effectively had no master, and lived on farms outside the towns. After his successor died in 1846, fear of ritual sacrifice led several more to flee to rural areas. With the assistance of missionaries and traders, these slaves persuaded the Ekpe Society (albeit temporarily) to ban sacrifices. In 1851, 200 slaves invaded Duke Town to strengthen the king’s powers and oppose flogging and execution.

Under Duke Ephraim land was converted into food plantations starting around 1830. Thousands of plantation slaves were thus employed. There is controversy (between Nair and Latham, for example) about whether these were established for commercial reasons. Northrup

\begin{footnotesize}
\begin{thebibliography}{99}
\bibitem{1231} WALC, Correspondence, p. 195
\bibitem{1232} WALC, Correspondence, p. 195
\bibitem{1233} WALC, Correspondence, p. 196
\bibitem{1234} Latham (1973), p. ???
\bibitem{1235} Daniell and Latham (1846), p. 223
\bibitem{1236} Daniell and Latham (1846), p. 216
\bibitem{1237} Daniell and Latham (1846), p. 218
\end{thebibliography}
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(1979) argues that they were created to serve the provisioning trade, but that this failed; though their potential was not realized, they were established for economic reasons. These slaves were victimized by freemen, and in the 1840s several fled to plantations "far distant from the towns." Slaves held their own land in trust for their master. When a slave redeemed himself, he might purchase or possess land in either the town or farm districts. One informant at Ikt Anasua told a political officer during the 1920s that the plantations had been larger in the past – "those were also the palmy days of slaves, when every Efik of any importance flung them into the bush by scores to clear the forest and plant crops." The use of large numbers of slaves in agricultural production then, need not be premised on the existence of rights over large areas by their owners, nor need it necessarily result in a zero-sum widening of the rights of some at the expense of others; slaves could also be used to clear and work virgin land, creating property where it had not hitherto existed. Chief Bassey Willie of Ikang told the District Commissioner in 1912 that accumulation of land in the bush by individuals had reached a point that “in some cases people now own so much land that they can do nothing with it and it lies waste.”

Jeffreys (1936) argues that the effect of slavery and the house system was to introduce communal tenure into the societies of the Calabar province. Communal ownership in this context “merely means that the land belongs to the free-born of the house and is used by its slaves who are serfs and who could be sold with the land. This system is exotic: it is not native law and custom.” This he uses to explain the difference between an 1893 letter signed by King Duke IX and others, claiming that land could not be attached for debt on the grounds that it “belongs to all the Calabar people,” from B. O. E. Duke Ephraim’s statement in 1913 that no “king, chief or any other person has any right over the farmland of a private person in the country or town, but the individual who purchased the land.” The intervening circumstance for Jeffreys (1936) was the abolition of slavery in 1901, which doomed the House system and created “a reversion to the original native system of land tenure… the slave cultivators of the House or communal land became at a stroke of the pen, freeholders.” (That these claims could have been tailored like those of the Kenyan chief quoted by Berry (1992) does not appear to have crossed his mind).

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1238 WLC, Minutes, p. 437
1239 Tour of Uwet and Oban Districts, p. 164
1240 WLC, Correspondence, p. 197
1241 Jeffreys (1936), p. 4
1242 Jeffreys (1933), p. 22
1243 Jeffreys (1933), p. 5
1244 Jeffreys (1933), p. 23
Chief Bassey Duke Ephraim, for his own part, told the WALT that the pawning of land was practiced long before it became illegal to pawn children. Wills were an innovation that resulted from British influence – in earlier times, heirs would only be disinherit as punishment for a crime. Similarly, grants to “strangers” were, during the early colonial period, written down, submitted to the District Commissioner, and registered. Despite the long-standing ties between Calabar and the West, and though sale between Africans was a long-standing custom, the only example of sale to a European to which Bassey Duke Ephraim would admit was one between Archibong Edem III and Lichfield. Ralph Moor had made a law forbidding sale to aliens, which was still in force in 1912.

In his testimony to the WALT, Rev. Weir of the United Free Church Mission argued that, when free migrants obtained land in Creek Town from a chief, they were incorporated into his house as a “half-free” – a person that would be called a “member” of the House in the British court and a “slave” at home. Slaves and half-free made up between 70% and 90% of the population of the town. Chief Bassey Duke of Calabar, for example, told the district commissioner that “members of houses formerly known as slaves cannot sell land.” A slave might be given a small plot by his master, but this was in no way the property of the slave. When the mission was established 65 years before, it did not permit slave owners to join, and so the King gave partial liberty to his slaves, including the freedom to build houses, trade for themselves, and purchase slaves of their own. These half-free acquired large tracts of land for themselves; using money obtained in the trade of palm oil, they purchased land in the interior, especially in the Eko country, because they were not permitted to buy land in Creek Town itself. The half-free landowners sold land outright among themselves. Still, they did not have the freehold of their lands. If a half-free rented land to a foreigner, his owning family could claim a share of the rent, though this was unlikely to be insisted upon unless he had “in other matters acted selfishly.” On death, their masters inherited their property. It was not possible to evade

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\begin{align*}
1245 & \text{ WALC, Minutes, p. 437} \\
1246 & \text{ WALC, Minutes, p. 438} \\
1247 & \text{ WALC, Minutes, p. 441} \\
1248 & \text{ WALC, Minutes, p. 339} \\
1249 & \text{ WALC, Minutes, p. 306} \\
1250 & \text{ WALC, Minutes, p. 307-309} \\
1251 & \text{ WALC, Correspondence, p. 198} \\
1252 & \text{ WALC, Minutes, p. 306} \\
1253 & \text{ WALC, Minutes, p. 306} \\
1254 & \text{ WALC, Correspondence, p. 196}
\end{align*}
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this restriction by selling land soon before death, because the widow was required to take an oath to reveal all of his possessions; even still, men sometimes hid money between each other so that they could provide for their widows. With Weir’s assistance, the attempted to put together a petition asking the British government to grant them liberty and the right to make wills; the government declared their meetings illegal and, determined to protect the property rights of chiefs, the District Commissioner c. 1905 purged the names of the half-free from the Native Court rolls. Ehpraim Duke Ephraim attempted to use the courts to consolidate his powers over the property of former slaves. In Ephraim v. Asuquo (1923), he argued that the estate of the deceased, a man who was pledged to King Duke IX and never redeemed, was merged with that of Duke IX on the death of the pawn.

1255 WALC, Minutes, p. 310
1256 WALC, Minutes, p. 307
1257 Ephraim v. Asuquo (1923), 4 N.L.R. 96
5. Conclusion

This paper has attempted to outline some of the major theories that attempt to explain the emergence of private property over land, and then evaluate them by examining in greater detail the forces they posit as important within the specific context of Southern Nigeria during that region’s transition to ‘legitimate commerce’ and the early colonial period. The argument throughout has been that the same force which could engender individualization of land given a certain set of circumstances could produce the opposite result in other contexts. A more useful framework for interpreting the dynamics of agrarian change is instead to look at how individuals and communities responded to the changes in the period in order to jockey for access to land and labor; not only does this focus shed light on aspects of institutional change that would be overlooked by other perspectives, but it also dispenses with abstract models which are claimed to elucidate the underlying factors in processes that are themselves only abstract, and not real.

The focus of this paper so far has been very broad, covering the whole of Southern Nigeria over a long period of time, and using any source material I can get my hands on. From this point on, I would like to narrow my attention both in scope and in sources. I believe it would be valuable to use archival Native Court records to make a comparative study of the developments of land tenure specifically in Abeokuta, Benin, and Aba. I propose these three cities are because a) their Native Court records are all housed in the same building at the National Archives, Ibadan, b) one is Yoruba, one Edo, and one Igbo, so as to not compromise the broader applicability of such a study, c) there is enough supplementary material on each to make the project feasible (i.e. I can write a history of land tenure without having to write a history itself) and relevant (I can engage with already-existing) secondary literatures, and d) there are specifics about each case that I find interesting. Abeokuta was one of the first Yoruba cities to welcome Christian missionaries, and one of the first to recognize sales. I know almost nothing about the communal rubber plantations in Benin, and would like to know more. The causes of the Aba Women’s War are still open to debate, and long-term developments in access to land has been shown to have been important in the Mau Mau period in Kenya, the Rwandan Genocide, and the recent civil war in Côte D’Ivoire. I would like to see if such a connection exists here as well.
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